***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 75-7529

PRINTED

In The

## United States Court of Appeals

For The Second Circuit

SCARVES BY VERA, INC.,

*Plaintiff-Appellant,*

*vs.*

TODO IMPORTS LTD. (INC.),

*Defendant-Appellee.*

UNITED STATES COURT OF APPEALS
FILED
JAN 19 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

# JOINT APPENDIX

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CIVIL DOCKET — DOCKET ENTRIES

UNITED STATES DISTRICT COURT

JUDGE CARTER

Jury demand date:

71 CIV. 301

D. C. Form No. 106 Rev.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| SCARVES BY VERA, INC.<br><br>AGAINST,<br><br>TODO IMPORTS LTD. (INC.) | For plaintiff:<br>~~WILLIAM R. LIBERMAN~~<br>~~30 East 42nd St.~~<br>~~N.Y.,N.Y. 10017~~<br>5/25/73 Substituted: Rogers, Hoge & Hill<br>90 Park Ave. NY 10<br>687-2120<br><br>For defendant:<br>Shenier & O'Connor<br>230 Park Ave. NY 10017 |

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | | I |
|---|---|---|---|---|---|---|---|
| J.S. 5 mailed X | Clerk | | 5-7-71 | W. LIBERMAN | 15 | - | |
| | | | 5-7-71 | CO. FEE | | | 15 - |
| J.S. 6 mailed | Marshal | | | | | | |
| Basis of Action:<br>TRADEMARK INFRINGEMENT. | Docket fee | | | | | | |
| | Witness fees | | | | | | |
| Action arose at: | Depositions | | | | | | |

SCARVES BY VERA VS. TODO IMPORTS LTD. (INC.)

# JUDGE CARTER— 71 CIV. 301

| DATE | PROCEEDINGS | Date Order Judgment N |
|---|---|---|
| Jul7-71 | Filed Complaint. Issued Summons. | |
| Jul 21-71 | Filed summons with marshal's ret. Served Todo Imports Ltd.(Inc.) by Vincent Unotia, Pres. by Mr. L. Frale, Secy. on 7/12/71. | |
| Jul 26-71 | Filed ANSWER to complaint. | |
| Jul. 26-71 | Filed Notice of taking Deposition of Saul P. Levinsohn, V.P. | S&P |
| Aug.4-71 | Filed pltff's notice to take deposition of deft. on 8-19-71 | |
| Aug.9-71 | Filed Notice of Motion re: Vacate Depos. Ret. 8/12/71. | |
| Aug.9-71 | Filed Affidavit of Francis M. O'Connor. | |
| Aug.9-71 | Filed Memorandum in support of deft's.motion to vacate notices of deposition. | |
| Aug.11-71 | Filed Affidavit in opposition to defendant'smotion to vacate. | |
| Aug.11-71 | Filed Memorandum in opposition todeft's.motions on examinations before trial. | |
| Aug.18-71 | Filed MEMORANDUM OPINION. Pierce, J. Defendant's motion to take depositions is denied. It is so ordered. (mailed notice). | |
| APR 14-72 | Filed Request for Admission. | |
| Apr.21-72 | Filed Depositionof Plaintf. (mailed notice). | |
| Apr.24-72 | Filed Answers to Request for Admissions. | |
| Apr.26-72 | Filed Interrogatories propounded by defendant to Plaintiff. | |
| May 9-72 | Filed Plaintiff's Answers to Defendant's Interrogatories. | |
| Aug. 28-72 | Filed stip & order that time which the deft. may answer or objections to pltff's first set of interrogs be ext. to Oct. 6-72. So ordered. Gagliardi,J. | |
| Oct.2-72 | Filed deft's answers to pltff's interrogs. | |
| Jan.30-73 | Filed pltff's requests under rule 34. | |
| Jan.30-73 | Filed pltff's second set of interrogs to deft. | |
| Jan.30-73 | Filed pltff's requests for admissions under rule 36. | |
| Feb.14-73 | Filed stip & order that deft's may respond to pltff's second set of interrogs is ext. to 4-2-73. So ordered. Carter.J. | |
| Mar.30,73 | Filed Deft's Answers to Pltff's Second Set of Interrogs. | |
| Mar.30,73 | Filed Deft's Answers to Pltff's Requests under Rule 34. | |
| Mar.30,73 | Filed Deft's Answers to Pltff's Requests for Admissions. | |
| May 25-73 | Filed Order substituting Rogers Hoge & Hills as attys. for Plaintiff Scarves by Vera, Inc., in place and stead of William R. Liberman. Carter, J.(mailed notice). | |
| Jun 4,73 | Filed Pltff's 2nd Set of Requests for Admissions of Deft. | |
| Jun 4,73 | Filed Pltff's 3rd set of Interrogs to Deft. | |
| Jul 2-73 | Filed deft's answers to pltff's second set of requests for admissions. | |
| Jul 2-73 | Filed deft's supplemental answers to pltff's requests for admissins (first set) | |
| Jul 2-73 | Filed deft's supplemental answers to pltff's first set of interrogs. | |
| Jul 2-73 | Filed deft's Answers to pltff's third pat of interrogs. | |
| Jul 5-73 | Filed pltffs. supplemental answers to deft's. interrogs. | |
| Jul 5-73 | Filed pltffs. supplemental answers to defts. request for admissions. | |
| Sep.7,73 | Filed Pltffs. Objections to Deft's Exhibits. | |
| Sep.27-73 | Filed deft's. response to pltfs. objections to def.'s. exhibits. | |
| Nov.12-73 | Filed Pltff. List of Exhibits which pltff expects offer at trial. | |
| Nov.23-73 | Filed Deft's Objections to Pltff's Exhibits. | |
| 6-21-74 | PRE-TRIAL CONFERENCE HELD BY Carter, J. | |
| Oct-21-74 | [illegible] | |
| Oct-22-74 | Trial con[illegible] motion reserved. Post trial briefs- | |
| Nov-22-74 | [illegible] reply papers by Nov-27-74 - Carter, J. | |
| Nov-27-74 | [illegible] post trial brief. | |
| Nov-27-74 | [illegible] | |
| Dec-17-74 | Filed Transcript of record of proceedings dated Oct 21, 22, 1974 | |

— See page 3 —

D. C. 110 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS |
|---|---|
| 07-10-75 | Filed OPINION #42761...For reasons stated herein, the Court sees nor reasons why why defendant shoulb be enjoined from using the surname of the manufacturer of its product on the toilet articles in question. So ordered. -- Carter, J. m,n |
| 07-17-75 | Filed plff's findings of fact and conclusions of law. |
| 07-17-75 | Filed reply to defendants post trial brief (filed by plff.) |
| 07-17-75 | Filed plaintiff's trial memorandum. |
| 07-17-75 | Filed plff's findings of fact and conclusions of law. |
| 08-28-75 | **Filed JUDGMENT that the plaintiff take nothing, that the action be dismissed on the merits, and that defendant Todo Importe, Ltd. (Inc.) recover of the plaintiff, Scarves By Vera, Inc., its costs to be taxed. - Carter, J. - Judgment entered - Clerk.** |
| 09-16-75 | **Filed plaintiff's notice of appeal from final judgment dismissing the complaint. (appeal to USCA, 2nd Circuit) -- copy mailed to: Shanier & O'Connor, Esqs.** |
| 10-10-75 | Filed stip. and order that a duplicate original of page 169 of the Oct. 1969 issue of Town and Country magazine shall be substituted for the lost original thereof which constituted a part of pltfs. exhibit's 2 & 3 evidence at rial herein. So ordered, Carter, J. ( ; A ) |
| 10-21-75 | Filed stip. and order ext. time to transmit record on appeal to 11-17-75 -- Carter, J |
| 11-13-75 | Filed stip and order further ext time to transmit record on appeal to 12-8-75 -- Carter, J |

COMPLAINT (Filed July 7, 1971)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

SCARVES BY VERA, INC.,

Plaintiff,

-against-

TODO IMPORTS LTD. (INC.),

Defendant.

Civil Action No. 71C3017

COMPLAINT

- - - - - - - - - - - - - - - - - - - - -x

The plaintiff, SCARVES BY VERA, INC., by William R. Liberman, its attorney, complaining of the defendant, TODO IMPORTS LTD. (INC.), alleges that

1. Plaintiff is a corporation duly organized and existing under the laws of the State of New York, and maintains its principal place of business at 45 West 18th Street, New York, New York 10011.

2. Defendant, on information and belief, is a corporation duly organized and existing under the laws of the State of New York and maintains its principal place of business at 37 East 12th Street, New York, New York 10003.

3. This is an action for trademark infringement and for unfair competition arising under the trademark laws of the United States (15 U.S.C. S 1051 et seq.), and this court has jurisdiction of this matter under Section 39 of the Trademark Act of 1946 (15 U.S.C. Section 1121) and under the United States Code of Judicial Procedure (28 U.S.C. Section 1338).

4. Plaintiff is a diversified corporation manufacturing and selling a variety of products intended for use for various purposes in the consumer field; among its products are articles of wearing apparel, such as are sold in department stores and shops of the boutique type and household linens and napery, also sold in such stores and shops.

5. On or about September of 1947, and long prior to the acts of defendant herein complained of, plaintiff adopted and began to use the word VERA as a trademark for said articles of wearing apparel and for said linens and napery. Said mark has been used continuously since that time by plaintiff for said purposes and is still in such use. Said mark has been used by being applied directly to said materials and by being applied to labels affixed to containers for said materials as well as in other convenient and appropriate ways.

6. The trademark VERA has come to be and now is and since long prior to the defendant's acts herein complained of has been widely and favorably known as identifying plaintiff's products exclusively and as distinguishing them from the products of others. Said mark and the good will symbolized by it are of great value to plaintiff.

7. Said trademark VERA was registered by plaintiff in the United States Patent Office on August 11, 1959 under Number 683,332, in respect of "ladies' scarves, neckties, blouses, shawls, and kerchiefs adapted to be worn as head coverings and as neckerchiefs" and on August 11, 1970 under Number 896,548 in respect of "articles of wearing apparel for women, young women and girls - namely, scarves, neckties, blouses, shawls, and kerchiefs adapted to be worn as head coverings and as neckerchiefs; barbecue sets

including aprons and gloves; coveralls in the nature of smocks; outer dress and sport shirts, outer shorts and trousers of assorted lengths, dress pajamas, waistcoats, shifts, dresses, playsuits, skirts, tunics, tops, jumpsuits, sashes, mufflers, ponchos, hats, caps, and hoods". Both registrations are still valid and subsisting and in full force and effect, and plaintiff is still the owner of them and of the marks shown by them. Copies of said registrations are attached and made a part hereof as Exhibits 1 and 2 to this complaint.

8. Defendant has offered for sale and sold and is presently offering for sale and selling a line of toiletry items such as are commonly sold in department stores and in shops of the boutique type, under the identical word VERA as a purported trademark.

9. Defendant's proposed use of said word as a trademark came to plaintiff's attention on or about July 30, 1970 and plaintiff promptly protested in writing to defendant on August 3, 1970 against such proposed use but defendant ignored such protest; on or about June 9, 1971 plaintiff for the first time learned that defendant actually had begun to sell a toiletries line under the word VERA as a trademark, and on June 10, 1971 plaintiff repeated its protest in writing to defendant but the latter has rejected such request and has refused to discontinue use of said word.

10. The word VERA used by defendant is identical to plaintiff's mark VERA and so resembles plaintiff's mark as to be likely, when applied to defendant's products, to cause confusion and to cause mistake and to deceive in that purchasers would believe that defendant's toiletries are made or sponsored by plaintiff, and defendant's said use of the word VERA constitutes

an infringement of plaintiff's trademark VERA and unfair competition with plaintiff.

11. By reason of its aforesaid acts defendant has caused and is causing irreparable injury to plaintiff and to plaintiff's business and good will and unless restrained by this court, such acts will be continued and will continue to cause irreparable injury to plaintiff.

12. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays:

(a) That defendant and its officers, agents, servants, employees and attorneys and all persons acting in concert or participation with them or any of them be enjoined and restrained temporarily during the pendency of this action, and then permanently, from applying to or using on or in connection with the sale, advertisement or offering for sale of any toiletries products, or other similar product, the term VERA or any other term so similar to plaintiff's trademark VERA as to be likely to cause confusion, mistake or deception.

(b) That defendant be ordered to deliver up to plaintiff for destruction, all labels, signs, prints, packages, wrappers, receptacles and advertisements in its possession or under its control which would violate the injunction herein sought, and all plates, molds, matrices and other means of making the same.

(c) That defendant be directed to file with this court and serve upon plaintiff, within 30 days after service upon defendants of an injunction issued in this action, a written report by defendant under oath setting forth in detail the manner and form in which defendant has complied with such injunction.

(d) That plaintiff recover its damages suffered by reason of defendant's acts herein complained of.

(e) That defendant be required to account to plaintiff for all profits derived by defendant by reason of its acts herein complained of and that said amount be trebled in view of defendant's deliberate conduct in appropriating plaintiff's trademark.

(f) That plaintiff recover its costs and disbursements and have such other and further relief as this court may deem just and proper.

Dated: New York, New York, June 29 1971.

SCARVES BY VERA, INC.

(corp. seal)

By Saul P. Levinsohn
Saul P. Levinsohn, Vice-President

Dated: New York, New York, June 29, 1971.

By William R. Lubenau
Attorney for Plaintiff
Office and P.O. Address
30 East 42nd Street
New York, New York 10017
Tel: (212) 867-0[illegible]70

STATE OF NEW YORK )
) SS:
COUNTY OF NEW YORK )

Saul P. Levinsohn, being duly sworn, deposes and says that he is an officer, to wit, the Vice-President of Scarves by Vera, Inc., the plaintiff in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Saul P. Levinsohn

Sworn to before me this
7 day of June, 1971.

Notary Public

NOTARY PUBLIC
No. [illegible]
Qualified in Suffolk County
Commission Expires March 30, 1972

EXHIBIT 1 - COPY OF REGISTRATION ANNEXED TO FORFGOING COMPLAINT

# United States Patent Office

683,332
Registered Aug. 11, 1959

## PRINCIPAL REGISTER
## Trademark

Ser. No. 57,096, filed Aug. 12, 1958

DECL. 8 & 15 FILED 6/30/65

Vera

Scarves by Vera, Inc. (New York corporation)
417 5th Ave.
New York 16, N.Y.

For: LADIES' SCARVES, NECKTIES, BLOUSES, SHAWLS, AND KERCHIEFS ADAPTED TO BE WORN AS HEAD COVERINGS AND AS NECKERCHIEFS, in CLASS 39.

First use in September 1947; in commerce in September 1947.

PLAINTIFF'S EXHIBIT 1

EXHIBIT 2 - COPY OF REGISTRATION ANNEXED TO FOREGOING COMPLAINT

# United States Patent Office

896,548
Registered Aug. 11, 1970

## PRINCIPAL REGISTER
## Trademark

Ser. No. 336,731, filed Sept. 2, 1969

Vera

Scarves by Vera, Inc. (New York corporation)
45 W. 18th St.
New York, N.Y. 10011

For: ARTICLES OF WEARING APPAREL FOR WOMEN, YOUNG WOMEN AND GIRLS—NAMELY, SCARVES, NECKTIES, BLOUSES, SHAWLS, AND KERCHIEFS ADAPTED TO BE WORN AS HEAD COVERINGS AND AS NECKERCHIEFS; BARBECUE SETS INCLUDING APRONS AND GLOVES; COVERALLS IN THE NATURE OF SMOCKS; OUTER DRESS AND SPORT SHIRTS, OUTER SHORTS AND TROUSERS OF ASSORTED LENGTHS, DRESS PAJAMAS, WAISTCOATS, SHIFTS, DRESSES, PLAYSUITS, SKIRTS, TUNICS, TOPS, JUMPSUITS, SASHES, MUFFLERS, PONCHOS, HATS, CAPS, AND HOODS—in CLASS 39 (INT. CL. 25).

For: TABLE LINENS, i.e., TABLECLOTHS, NAPKINS, HAND TOWELS, KITCHEN APRONS, DISH TOWELS, GUEST TOWELS, POTHOLDERS, PLACE MATS, AND BATH TOWELS, in CLASS 42 (INT. CL. 24).

First use September 1947; in commerce September 1947.

Owner of Reg. No. 683,332.

RECEIVED
JUL 26 1971
WILLIAM R. LIBERMAN
ATTORNEY FOR
FILE NO.

In the
UNITED STATES DISTRICT COURT
for the
Southern District of New York

----------x

SCARVES BY VERA, INC.,

Plaintiff,

v.

TODO IMPORTS LTD. (Inc.),

Defendant.

----------x

Civil Action File

No. 71 CIV. 3017

## Defendant's Answer

Comes now TODO IMPORTS, LTD. [sued as "TODO IMPORTS LTD. (Inc.)"], the defendant above named, and for answer to the complaint of plaintiff filed herein:

1.

Complaint, ¶1. - Defendant is without knowledge or information sufficient to form a belief as to the truth of any of the averments of Paragraph 1.

2.

Complaint, ¶2. - Admits.

3.

Complaint, ¶3. - Admits.

4.

Complaint, ¶4. - Defendant is without knowledge

or information sufficient to form a belief as to the truth of any of the averments of Paragraph 4.

5.

Complaint, ¶5. - Defendant is without knowledge or information sufficient to form a belief as to the truth of any of the averments of Paragraph 5.

6.

Complaint, ¶6. - Denies.

7.

Complaint, ¶7. - Admits.

8.

Complaint, ¶8. - Denies, except in respect of cologne for men.

9.

Complaint, ¶9. - Denies, except that defendant admits it used the surname "VERA" in different display as a trademark for cologne for men.

10.

Complaint, ¶10. - Denies.

11.

Complaint, ¶11. - Denies.

12.

Complaint, ¶12. - Denies.

Affirmative Defenses

The complaint should be dismissed for the following reasons:

(a) Defendant imports a line of cosmetics manufactured by VERA, a Spanish company having a principal place of business at Barcelona, Spain.

(b) "VERA" is a surname, being the name of Abelardo Vera, the owner of VERA in Spain.

(c) The notation "VERA", except in the case of cologne for men (colonia para hombres), was used to indicate the manufacturer and not the product, which product was identified by such trademarks as "SIGLO DE ORO", "ISABEL MARIA", "74", "BRILLANTINA", "ISABELINA", "NATURAL", "VIEJA", "S. O.", "LAVANDA", "SOIR DE PRINTEMPS", "VENTOLERA", "PALMANOVA:, "NOCHES DE ACAPULCO", "LYRIUM", "ACAPULCO", "MANDALAY", "LAVANDA DE LOS ALPES", "4 ROSAS", "MANHATTAN", "KANSAS CITY", "ARIZONA", "VIRGINIA", "ATARDECER", "ESTAMPAS", "LUCE", "FANTASIA ORIENTAL", "VENECIA", "PRIMAVERA", "GUENDALINA", "LUCITA", "MILANO" and "SIX-LAC".

(d) Defendant's products are colognes, perfumes, soaps, hair sprays, deodorants, lipsticks, face powders, eye shadows and nail lacquers.

(e) Defendant makes none of the goods of plaintiff.

(f) Defendant's goods are not sold through the same channels of trade as are the goods of plaintiff, and, in department stores which sell all types of goods, defendant's goods are sold in different departments than are the goods of plaintiff.

(g) The prices of defendant's goods are different from the prices of plaintiff's goods.

(h) Defendant's manufacturer, VERA, of Spain, has been using the notation "VERA" to indicate the origin of the goods since before May 31, 1947, prior to the earliest first use by plaintiff in its Registrations 683,332 and 896,548.

(i) Defendant is informed, and being informed believes, and believing avers, that travelers from the United States in Spain have bought goods of VERA of Spain, and have brought the same into the United States prior to plaintiff's alleged first use of the trademark "VERA".

(j) The display of "Vera" by plaintiff is in script in distinctive form, while defendant's use of "VERA" is in simple block letters.

(k) The only use made by defendant of "VERA" as a trademark is for cologne for men. Plaintiff's trademark is restricted to ladies' wearing apparel, except, more recently, for such things as table linens, pot holders and bath towels.

(l) There is no logical, rational or credible foundation for the assertion that plaintiff will be damaged by the conjoint use of "VERA" on defendant's cologne for men, in block letters, and "Vera", in script, for plaintiff's goods.

(m) "VERA" has been used on other goods, by other merchants, without confusion.

(n) It would be inequitable and unjust to prevent defendant's manufacturer from using its own surname, which it has been doing since before May 31, 1947, to indicate the source of its products in exporting them to the United States for distribution by defendant.

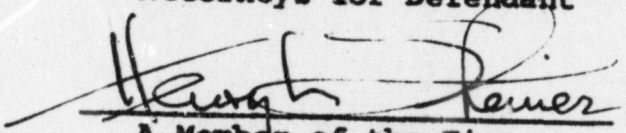
WHEREFORE, defendant humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

Dated: New York, N. Y.

July 23, 1971

TODO IMPORTS, LTD.
Defendant

By SHENIER & O'CONNOR
Attorneys for Defendant



A Member of the Firm
230 Park Avenue
New York, N. Y. 10017

Tel: (212) MU 4-4639

PLAINTIFF'S REQUESTS FOR ADMISSIONS UNDER RULE 36 (Filed January 30, 1973)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| SCARVES BY VERA, INC., Plaintiff, -against- TODO IMPORTS LTD. (INC.), Defendant. | CIVIL ACTION No. 71 CIV 3017 |

REQUESTS FOR ADMISSIONS
UNDER RULE 36

SIRS:

Please take notice that, under and in accordance with the provisions of Rule 36, F.R.C.P. you are hereby requested to admit the following:

1. That the defendant, or an entity acting on behalf of the defendant, caused to be inserted in the Women's Wear Daily of July 29, 1970 on page 54 thereof, an advertisement a copy of which is annexed hereto as Plaintiff's Exhibit 1.

2. That the defendant received on August 4, 1970, the original of a letter dated August 3, 1970 from the attorney for the plaintiff, a copy of which is annexed hereto as Plaintiff's Exhibit 2.

3. That neither the defendant nor any one on its behalf made any written or oral answer to said letter Plaintiff's Exhibit 2.

4. That the defendant received on June 11, 1971 the original of a letter dated August 3, 1970 from the attorney for the plaintiff, a copy of which is annexed hereto as Plaintiff's Exhibit 3.

5. That neither the defendant nor any one on its behalf made any answer or oral answer to said letter Plaintiff's Exhibit 3.

6. That defendant does not itself manufacture any product on which the word VERA appears.

7. That defendant is a sales agent of a foreign entity which produces perfumes, colognes, soaps and other toiletry products on which the word VERA appears.

8. That the word VERA appearing on products sold by defendant refers at least in part to the source or origin of the goods.

DATED: New York, N. Y. January 29, 1973

Yours, etc.

William R. Liberman

William R. Liberman
Attorney for Plaintiff
41 East 42nd Street
New York, N.Y. 10017
Telephone: 867-0270

TO: Clerk of the Court

Shenier & O'Connor, Esqs.
Attorneys for Defendant
230 Park Avenue
New York, N. Y. 10017
Telephone: MU4-4639

PLAINTIFF'S EXHIBIT 1 - COPY OF ADVERTISEMENT ANNEXED TO FOREGOING REQUESTS

19a

PLF 648
8/19/71 a



*Help Wanted*

## DESIGNER

Ladies' & Children's Robes—Quilts—Dusters

Leading Sleepwear Mfr. desires profitwise talented individual

Box 679 Realservice 110 W 34

SHIPPING HEAD

Billing, orders, inventory. Good opty., expd. energetic worker. References.

MW243. 7 E 12th St. NY 10003.

PRODN ASST $13M

RODES Fee Paid

SWIFT AGENCY 135 W 41 St.

## BKKPR - ASST.

Garment exp. knowledge of bookkeeping machine - Apex Dress Co. 1400 Bway. NYC. WI 7-1254

SHOWRM FEE PAID $135

Fashion Accessory House Fifth Ave.

MEL GABBE AGENCY 485 5th Ave

TRIMMING girl assistant to buyer for popular priced dress mfr. 564-9609

SHOWRM FEE PAID $125

LEADING FASHION SHIRT MAKER

MEL GABBE AGENCY 485 5th Ave

ORDER PICKING - SHIPPING LEADING TO SELLING (212) BR 9-5772.

MECHANIC - sewing machine plant. Experienced on bathing suits. Long Island firm. (516) 333-9800 ask for Lana.

BOOKKEEPER full charge, general ledger, manufacturing experience, factory statement. 675-8333, Miss Sattman.

*Sales Help Wanted*

## SPORTSWEAR & DRESS MAN EXPERIENCED

MO., KAN., SO. ILL.

COS COB (Missy) and PEP-PERTREE (Juniors) need man who knows this area at once for territory currently producing good business with excellent growth potential.

Liberal draw, insurance, hospitalization and other fringe benefits for right man. Write or call in strict confidence, giving details of past experience to BRUCE BLUMENTHAL.

**COS COB**

MERCHANDISE MART (Room 909)

CHICAGO, ILL 60654

(312) 527-3505

## KNITKNACKS

Experienced men wanted for fast moving accessory companion line with today's young look. Outstanding import collection of crochet wool caps and hat/scarf sets

LEFCOURT IMPORTS, INC.

919 WEST 39TH STREET

MIAMI BEACH, FLORIDA

*Sales Help Wanted*

## SALESMEN

One of North America's largest and most successful leather coat manufacturer with plants and offices in NEW YORK, DENVER, LOS ANGELES & WINNIPEG, requires salesmen for several areas.

Due to enlarged production facilities in United States, we are now in a position to add several salesmen to work in the following areas:

CHICAGO, DALLAS, ATLANTA
CLEVELAND, MINNEAPOLIS

Write to Herman Greenspon

IMPERIAL LEATHER & SPORTSWEAR

443 So. Oakhurst Drive

Beverly Hills, Calif. 90212 (213) 275-8609

Include your phone number in your reply

ONE OF CALIFORNIA'S MOST FASHIONABLE MANUFACTURERS

Of missy dress & costume lines & of imperial designs, a major division has

*Sales Help Wanted*

## TOP CALIFORNIA LADIES' LINE

We [illegible] established sel[illegible] organization represent[illegible] California Fashions [illegible] lines in So. Caro[illegible] Carolina & Va[illegible] & Commission. Ex[illegible] basis. Write

JACK MACKLER

4900 Tarzana Wonder Drive

Tarzana, California 9[illegible]

## VERA

BARCELONA SPAIN

Seeks capable sales rep[illegible] with strong following in the [illegible] tories to represent complete line of toiletries. Must have [illegible] following. All replies will be answered. Please call or write

P.A. Riter Grossman
Sales Mgr.

TODO IMPORTS

37 E. 12 St. NY C 10003

212-533-5451

## BLOUSES

Mfr-Popular priced blouses seeks salesman for chains & metropolitan area

212—CA 6-5072

PLAINTIFF'S EXHIBIT 2 - LETTER DATED AUGUST 3, 1970 ANNEXED TO FOREGOING REQUESTS



August 3, 1970

File 9070-F

Todo Imports
37 E. 12 Street
New York City, N. Y. 10003

Attention of Mr. P. A. Riter Grossman

Dear Sir:

This office is counsel to Scarves by Vera, Inc., a company which has been in business for many years in boutique items under the trademark VERA. These boutique items are sold side by side with toiletries, costume jewelry, etc.

An advertisement of yours on page 54 of "Women's Wear Daily" of July 29, 1970 has been called to my attention. I write to advise that should you proceed with the plans to market toiletries in this country under the brand VERA, suit will be brought for an injunction to restrain such use and an accounting of the profits and damages.

This letter is being sent by Certified Mail with a request for return receipt so there will be no question that you are on notice of my client's rights in the trademark VERA and that you will proceed with the planned use of this item at your peril.

Yours truly,

WRL

WRL/A
Certified Mail
Return Receipt Requested

RECEIPT FOR CERTIFIED MAIL—20¢

SENT TO
Todo Imports
STREET AND NO. Att: Mr. P. A. Riter
37 E. 12 Street Grossman
CITY AND STATE
New York City, N.Y. 10003

If you want a return receipt, check which ☐ 10¢ shows to whom and when delivered ☐ 35¢ shows to whom, when, and address where delivered

If you want restricted delivery, check here ☐ 50¢ fee

FEES ADDITIONAL TO 20¢ FEE

P.O. Form 3800 June 1962

CAUTION—NOT FOR INTERNATIONAL MAIL

(See

No. 189526

3 AUG

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO. 189526

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED AUG 1 19

SHOW WHERE DELIVERED (only if requested)

GPO

8/19/71 RS

PLAINTIFF'S EXHIBIT 3 - LETTER DATED JUNE 10, 1971 ANNEXED TO FOREGOING REQUESTS



June 10, 1971

File 9070-F

Todo Imports Ltd.
37 East 12th Street
New York, N. Y. 10003

Gentlemen:

This office is counsel to Scarves by Vera, Inc., which client is the owner of the trademark VERA as applied to articles of wearing apparel including such as are sold in boutiques. On August 4, 1970 I wrote demanding that you make no use of the mark VERA as applied to colognes and toiletries since these are very often sold in boutiques which sell the VERA-marked products of my client.

On Friday, June 4, 1971, and for the first time, packages of your VERA products were found and purchased. I write to advise, therefore, that unless these products are immediately withdrawn from the market I shall proceed with suit for an injunction and an accounting of profits and damages without further notice.

Yours truly,

WRL:jml

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S). REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered ☐ Deliver ONLY to addressee

¢ (plus postage)

RECEIPT

Received the numbered article described below.

REGISTERED NO. | SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO. 824360 | SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO. 824360

DATE DELIVERED JUN 11 1971 | SHOW WHERE DELIVERED (only if requested)

POSTMARK OR DATE

15¢
65¢
35¢
85¢
50¢
45¢

DED— (See other side)

IL

USCO-16-71-48-11 317-108 GPO

★ GPO 1969 O—358-312

EXHIBIT 3

DEFENDANT'S ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS (Filed March 30, 1973) 22a

In the
UNITED STATES DISTRICT COURT
for the
Southern District of New York

----------x

SCARVES BY VERA, INC., :

Plaintiff, :

v. : Civil Action File No. 71 CIV. 3017

TODO IMPORTS LTD. (Inc.), :

Defendant. :

----------x

Defendant's Answers to
Plaintiff's Requests for Admissions

Following are the defendant's answers to the plaintiff's requests for admissions dated January 29, 1973:

As to Request 1: Admitted.

As to Request 2: The threat dated August 3, 1970 was received.

As to Request 3: No legal obligation to respond to the unwarranted threat was incumbent upon defendant.

As to Request 4: Denied.

As to Request 5: Denied.

As to Request 6: Admitted.

As to Request 7: Admitted.

As to Request 8: Admitted. "VERA" has been used by defendant's manufacturer to indicate the source of the goods for over 40 years.

TODO IMPORTS, LTD.

By Alfredo V. Fernandez
Alfredo V. Fernandez
Vice President and
General Manager

State of New York )
) ss.
County of New York )

Comes now ALFREDO V. FERNANDEZ, who states that he is Vice President and General Manager of Todo Imports, Ltd.; that the answers to the foregoing Requests for Admissions are true of his own knowledge, except as to those which were answered on information and belief, and as to these he believes them to be true.

Subscribed and sworn to before me, this 30TH day of MARCH, 1973.

Ita C. Murphy
Notary Public

ITA C. MURPHY
NOTARY PUBLIC, State of New York
Qual. in Nassau Co. No. 30-2824900
Certificate filed in New York County
Commission Expires March 30, 1975

## Certificate of Service

This is to certify that there was deposited, on the day of , 1973, a copy of the foregoing Defendant's Answers to Plaintiff's Requests for Admissions in a receptacle provided for this purpose by the United States Postal Service, enclosed in an envelope addressed to William R. Liberman, Esq., attorney for the plaintiff, at 41 East 42nd Street, New York, New York 10017, and bearing sufficient first class postage.

Henry L. Shenier
Attorney for Defendant

DEFENDANT'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS (Filed March 30, 1973)



In the
UNITED STATES DISTRICT COURT
for the
Southern District of New York

HOGE & HILLS
Attorneys for

---

SCARVES BY VERA, INC.,

Plaintiff,

v.

TODO IMPORTS LTD. (Inc.),

Defendant.

Civil Action File
No. 71 CIV. 3017

R.L.C.

---

**Defendant's Supplemental Answers to Plaintiff's Requests for Admissions (First Set)**

Following are the defendant's supplemental answers to the plaintiff's requests for admissions dated January 29, 1973:

**As to Request 3:** Admitted.

TODO IMPORTS, LTD.

By Alfredo V. Fernandez
Alfredo V. Fernandez
Vice President and
General Manager

State of New York )
) ss.
County of New York )

Comes now ALFREDO V. FERNANDEZ, who states that he is Vice President and General Manager of TODO IMPORTS, LTD.; that the foregoing Defendant's Supplemental Answers to Plaintiff's Requests for Admissions (First Set) are true of his own knowledge, except as to those which were answered on information and belief, and as to these he believes them to be true.

Subscribed and sworn to before me, this 29TH day of June, 1973.

Ita C. Murphy
Notary Public

ITA C. MURPHY
NOTARY PUBLIC, State of New York
Qual. in Nassau Co. No. 30-2024908
Certificate filed in New York County
Commission Expires March 30, 1975

(Filed June 4, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCARVES BY VERA, INC., :

Plaintiff, : 71 Civ. 3017 RLC

v. :

TODO IMPORTS LTD. (Inc.), :

Defendant. :

PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSIONS OF DEFENDANT

SIRS:

Please take notice that in accordance with the provisions of Rule 36 of the Federal Rules of Civil Procedure, you are hereby requested to admit the following:

1. That the defendant received on June 11, 1971 the original of a letter dated June 10, 1971 from William R. Liberman, Esq., a copy of which is annexed hereto as plaintiff's Exhibit 3.

Admitted

2. That neither the defendant nor any one on its behalf made any written or oral answer to said plaintiff's Exhibit 3.

3. That Exhibit 1 annexed hereto is a correct and true English language translation of the text of the contract between Vera Perfumeria y Cosmetica, S.A. and Todo Imports Ltd. referred to in defendant's response to Request 1 of plaintiff's Requests under Rule 34.

ROGERS HOGE & HILLS

By Alfred P. O. Hoge
Attorneys for Plaintiff
Office and P.O. Address
90 Park Avenue
New York, New York 10016
(212) 687-2120

William R. Liberman
41 East 42nd Street
New York, New York 10017
(212) 867-0270
Of Counsel

Dated: New York, New York
May 31st 1973

EXHIBIT 1

EXHIBIT 1 - ENGLISH TRANSLATION OF CONTRACT ANNEXED TO FOREGOING 28a

LAWYERS' & MERCHANTS' TRANSLATION BUREAU
Carl V. Bertsche (1908-1966) *(Translating Service Bureau)* Wm. Bertsche, J.D., Ch. E., A.C.S.
Est. 1908
11 BROADWAY, NEW YORK, N. Y. 10004

1908 - 1973 65th Anniversary LAWYERS' AND MERCHANTS' TRANSLATION BUREAU

ACCURACY

# Certificate of Accuracy

TRANSLATION
From Spanish to English

STATE OF NEW YORK }
COUNTY OF NEW YORK } s.s.:

On this day personally appeared before me Wm. Bertsche, J.D., Ch.E., A.C.S. who, after being duly sworn, deposes and states:

That he is a translator of the Spanish and English languages by profession and as such connected with the LAWYERS' & MERCHANTS' TRANSLATION BUREAU;

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the Spanish language (on the official paper of the LAWYERS' & MERCHANTS' TRANSLATION BUREAU); and

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

W J Bertsche

SUBSCRIBED AND SWORN TO BEFORE ME
THIS MAY 22 1973

Barbara Lenard

BARBARA LENARD
Notary Public, State of New York
No. 60-7489910 - Westchester County
Certificate filed in New York County
Term Expires March 30, 1974

Contract for Exclusive Rights to the products of VERA PERFUMERIA Y COSMETICA, S.A., in favor of TODO IMPORTS LTD. for the distribution and sale in the State of New York

Period of Validity

June 1, 1970 to June 1, 1973

from:

In the City of Barcelona on this 1st day of June 1970, there met:

Mr. Abelardo Vera Martinez, in the name and on behalf of the Vera Perfumeria y Cosmetica, S.A., domiciled at Calle Travesera de Gracia, No. 332 in this city,

Party of the First Part,

And:

Mr. Vicente Urrutia Nadal, in the name and on behalf of Renaex, S.L., domiciled at Avenida de la Catedral, 9, 3rd Floor and its subsidiary in the United States of America, Todo Imports Ltd., of 37 East 12th Street, New York, N. Y.,

Party of the Second Part.

They acknowledged that each of them has sufficient power to execute the present contract of exclusive distribution and sales rights and by virtue thereof agree as follows:

FIRST: Vera Perfumeria y Cosmetica, S.A. grants to Todo Imports Ltd. the exclusive right to sell and distribute its products within the territory of the State of New York, agreeing not to carry out any direct operations with any other company domiciled in said State, subject to the exception stipulated in the following Article.

SECOND: By way of exception, up to a maximum limit of $8,000 a year, the Vera Perfumeria y Cosmetica, S.A. reserves the right to sell any of its products to the Vera Cosmetics Co., established in the said City of New York.

THIRD: Todo Imports Ltd. agrees not to sell either

from:

personally or through an interposed firm, the products of Vera Perfumeria y Cosmetica, S.A. outside the territory of the U.S.A., nor in any State of said country, with the exclusion of the State of New York, which the latter indicates to it subsequent to the signing of the present agreement, unless expressly authorized by it.

FOURTH: The present contract is established for a period of three years, as from the date hereof, and may be extended for successive periods of three years each by mutual agreement between the two parties.

FIFTH: Within the term of each period of three years, the present contract may only be cancelled for the following reasons:

a) By mutual agreement of both contracting parties;

b) By Vera Perfumeria y Cosmetica, S.A. on any anniversary date of the present contract if Todo Imports Ltd. has not reached the following minimum purchase figures:

1) During the first year (June 1, 1970 to June 1, 1971) a minimum of US$25,000;

2) During the second year (June 1, 1971 to June 1, 1972) a minimum of US$31,250, representing an increase of 25% over the preceding figure;

3) During the third year, (June 1, 1972 to June 1, 1973) a minimum of US$39,000, which also constitutes an increase of 25% over the preceding figure.

from:

For the computation of the said minimum amounts, the purchases shall be considered made on the date of receipt of the respective orders at the Vera Perfumeria y Cosmetica, S.A.

c) By Vera Perfumeria y Cosmetica, S.A. in the event that punctual payment for the purchases made is not effected.

By Todo Imports Ltd., effective on any anniversary date of this contract.

The rescision of the present contract must be effected by registered mail, return receipt requested, such notice of cancellation to be mailed at least sixty days prior to the stipulated date of cancellation.

SIXTH: The present contract does not give Todo Imports Ltd. the right to act as legal representative of Vera Perfumeria y Cosmetica, S.A., and accordingly, the former shall have no right to create any obligation or responsibility, whether express or implied, for the account or in the name of Vera Perfumeria y Cosmetica, S.A., unless expressly authorized by the latter.

SEVENTH: The operations between the two companies shall be carried out in accordance with the following provisions:

(a) The sales shall be effected FOB Barcelona, through Renaex, S.L. which will take charge of the picking up, transportation and customs clearance of the shipments, in consideration of a discount of 2% on the amount of the invoice;

from:

(b) The sales prices shall be those indicated in the Export Price List of Vera Perfumeria y Cosmetica, S.A. in force at the time that the operation is carried out;

(c) The payments will be made through Renaex, S.L. within a maximum period of fifteen days from the delivery of the merchandise to it;

(d) All official documents concerning the sales to Todo Imports S.L. shall be issued by Vera Perfumeria y Cosmetica, S.A. which shall appear as sole exporter of its products for all official purposes.

EIGHTH: Vera Perfumeria y Cosmetica, S.A. agrees insofar as possible, to provide Todo Imports, Ltd. with the advertising material which it has for promoting the sale of its products.

NINTH: The two parties agree to submit any doubts or differences of opinion which might arise in the application of the present contract to arbitration and jurisdiction of the courts of this city of Barcelona.

In witness whereof, the two parties sign the present contract which is executed in duplicate in the city and on the date set forth above.

VERA PERFUMERIA Y COSMETICA, S.A.
Vera Perfumeria y Cosmetica, S.A.
Abolardo Vera Martinez
Managing Director
S/Signature

from:

RENAEX, S.L.

Renaex, S.L.

TODO IMPORTS LTD.

S/Signature

Vicente Urrutia Nadal

Stamp Reading:

Renaex, S. L.

Barcelona

8/19/71 CS



EXHIBIT 3 - LETTER DATED JUNE 10, 1971 ANNEXED TO FOREGOING

June 10, 1971

File 9070-F

Todo Imports Ltd.
37 East 12th Street
New York, N. Y. 10003

Gentlemen:

This office is counsel to Scarves by Vera, Inc., which client is the owner of the trademark VERA as applied to articles of wearing apparel including such as are sold in boutiques. On August 4, 1970 I wrote demanding that you make no use of the mark VERA as applied to colognes and toiletries since these are very often sold in boutiques which sell the VERA-marked products of my client.

On Friday, June 4, 1971, and for the first time, packages of your VERA products were found and purchased. I write to advise, therefore, that unless these products are immediately withdrawn from the market I shall proceed with suit for an injunction and an accounting of profits and damages without further notice.

Yours truly,

WRL:jml

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S). REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered

☐ Deliver ONLY to addressee

(plus postage)

RECEIPT

Received the numbered article described below.

SIGNATURE OF ADDRESSEE OR AGENT (Must always be filled in)

REGISTERED NO. R 43609

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO. 824360

SHOW WHERE DELIVERED (only if requested)

DATE RECEIVED JUN 11 1971

POSTMARK OR DATE

15¢
65¢
35¢
65¢
50¢
45¢

(See other side)

EXHIBIT B

DEFENDANT'S ANSWERS TO PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSIONS (Filed July 2, 1973)

RECEIVED
Time 4:44 mail 36a
Date 7/2/73
ROGERS HOGE & HILLS
Attorneys for

In the
UNITED STATES DISTRICT COURT
for the
Southern District of New York

---

SCARVES BY VERA, INC.,

Plaintiff,

v.

TODO IMPORTS LTD. (Inc.),

Defendant.

Civil Action File
No. 71 CIV. 3017
R.L.C.

---

**Defendant's Answers to Plaintiff's Second Set of Requests for Admissions**

Following are the defendant's answers to the plaintiff's second set of requests for admissions dated May 31, 1973:

As to Request 1: Admitted.

As to Request 2: Admitted.

As to Request 3: Admitted.

TODO IMPORTS, LTD.

By Alfredo W. Fernandez
Alfredo W. Fernandez
Vice President and
General Manager

State of New York )
) ss.
County of New York )

Comes now ALFREDO V. FERNANDEZ, who states that he is Vice President and General Manager of TODO IMPORTS, LTD.; that the foregoing Defendant's Answers to Plaintiff's Second Set of Requests for Admissions are true of his own knowledge, except as to those which were answered on information and belief, and as to these he believes them to be true.

Subscribed and sworn to before me, this 29TH day of June, 1973.

Ita C. Murphy
Notary Public

ITA C. MURPHY
NOTARY PUBLIC, State of New York
Qual. in Nassau Co. No. 30-3884700
Certificate filed in New York County
Commission Expires March 30, 1975

* * *

JWal 2

MR. O'HARA: I have a very short memorandum. We previously submitted a pre-trial memorandum. This is about as short as I can make it. There is an original and copy there for the Court. If your Honor wishes an opening statement I am prepared to make one.

THE COURT: I don't particularly want it. It is not going to help me very much. I have some general idea what this matter is all about. I think what I would prefer is for you to present your case and I will understand it better as you go along.

S A U L P. L E V I N S O H N, called as a witness, being first duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Levinsohn, are you presently employed by the plaintiff Scarves by Vera?

A No.

Q Were you previously employed by Scarves by Vera?

A Yes.

Q And when did your employment commence with Scarves by Vera?

A August 1953.

MR. O'HARA: Your Honor, for purposes of the record,

instead of the whole corporate name I sometimes will refer to just Vera.

THE COURT: I think I will understand that.

Q What was your position with Vera during the course of your employment?

A I was the Vice President of the company.

Q From the very beginning?

A No, not from the very beginning.

Q Tell us the role that you had as an employee from when you were first employed in a brief way to the time that you left?

A I was in charge of the manufacturing of the various products of the company, limited, however, to the scarf division most particularly, and manufacturing overseas.

Q And eventually you became an officer of the company; is that right?

A Yes, sir.

Q But not a stockholder; is that right?

A Correct.

Q At the time that you were first employed by Vera, what were the products that were made by Vera?

A Scarves and women's accessories.

Q List the category of women's accessories, particularly the items, please.

A Women's scarves, headwear, shawls, mufflers, beach bags and general accessory apparel of that nature.

Q During the course of your employment and up until the time that you left were there other goods that were added to the line that was there when you first came?

A Yes, sir.

Q What were those goods?

A There were table linens, women's sportswear and dresses, belts, sweaters. That was the items generally in the Vera line.

Q Ladies' blouses?

A Yes, included in women's sportswear.

Q And ladies' blouses would be included in sportswear?

A Yes.

Q In connection with these articles, was there any name or mark associated with them?

A Yes, Vera.

Q Were there any other marks or names on the goods that were sold so far as you know?

A No.

MR. SHENIER: I didn't hear the answer.

THE COURT: The answer was no.

THE WITNESS: No.

Q And just the word Vera; is that correct?

A That's the term used generally to describe the company and its product.

Q And most of these products were textiles of one kind or another, were they not?

A Yes, sir.

Q Was it a practice for the word Vera to be imprinted or woven or in some way made a physical part of the product as against a hand tag, or what have you?

A Yes.

Q Customarily that was done; is that right?

A I'm sorry?

Q I say, customarily that was done; is that right?

A Yes.

Q Were there also labels in the garments and hand tags?

A Yes.

THE COURT: What do you mean by that, Mr. Levinsohn? Do you mean that Vera was on a tag sewn to the article or was it woven into the article?

THE WITNESS: Yes, sir. In most cases the fabrics included the word -- printed word Vera and in addition --

THE COURT: On it --

THE WITNESS: Yes, sir, in the case of scarves the printing included the word Vera as well as a woven label attached to the scarf for purposes of identification of

company, flamable fabrics and for Customs purposes of entry into the country.

THE COURT: All right.

MR. O'HARA: This has been premarked, your Honor, but just from the point of illustration of what the witness is talking about, I am referring to an exhibit marked for identification as Plaintiff's Exhibit 1-G.

Q During the period of time that you were there, did the sales of Vera increase year by year?

A Yes, sir.

Q Would that be true of every year?

A Yes.

Q At the time that you left, have you any idea of the number of retail stores that were selling the products of Vera?

A Yes, I know that.

Q How many were there?

A Vera had about 8,000 accounts.

Q With respect to these --

THE COURT: Excuse me, I think you established when you started, but I don't think you established when you left.

MR. O'HARA: I'm sorry, I thought that was originally given.

Q Mr. Levinsohn, when did you leave?

A February 28, this year.

Q February 28, 1974?

A '74.

Q Do you have any familiarity with the type of store in which the product of Vera was sold?

A Products were generally sold to Department stores, boutiques, specialty shops. That is about the gamut.

Q In the textile industry are there various stratas or levels of, for want of a better term, fashion?

A Yes.

Q Is it also a fact that the outlets or stores to some degree fit within those strata in what they sell?

A Yes.

Q So that you would have varying types of stores selling various levels of fashion garments; is that correct?

A Yes, sir.

Q For example, in the City of New York, could you name me one or two stores that you regard as high fashion stores?

A Bergdorf Goodman, Saks Fifth Avenue, Bonwit Tellers, Lord and Taylor, B. Altman Company.

Q Then also are there smaller stores which are known as boutiques?

A Yes, Peck & Peck is one of the type, Plymouth Shops would be another, and -- I think those two would cover the run

Q As you go from New York to the smaller communities in the country, the stores would in general be smaller stores -- I am talking now from the point of view from the space occupied and the sales personnel -- is that true?

A Yes.

Q For example, in a boutique, in a smaller community, you might have one, two, three sales people?

A Yes.

Q And the goods on sale in that boutique would cover what range? What range would you expect to find in a boutique that would handle Vera scarves and similar products?

A The type merchandise?

Q Yes, the type of merchandise that you would find in that kind of an outlet.

A The sportswear I described such as blouses, slacks, sweaters, scarves, shawls, possibly underclothing for women.

Q Would or would it not be customary to find any toiletries or fragrances in boutiques?

A I'm sorry?

MR. SHENIER: I object to the question as leading. The witness didn't volunteer and he is now suggesting it and we haven't established that the witness is familiar with this.

THE COURT: I think that's something that you can establish or not establish in the course of cross examination.

I agree that Mr. O'Hara is leading, but I think he has been leading for much of this examination.

MR. SHENIER: He has been leading. I haven't objected, but if Mr. O'Hara wants to testify I think he should take the stand.

MR. O'HARA: Your Honor, I don't think I have been leading on matters that --

THE COURT: I think maybe you are in an area now that apparently it is best that you stop.

MR. O'HARA: All right. I withdraw the question, your Honor.

Q Mr. Levinsohn, have you in the past years while employed by Vera ever visited any boutiques?

A Oh, yes.

Q All right. Now, will you please tell us as best you can what goods you found that were offered for sale in boutiques?

THE COURT: I am a little confused. You earlier asked him questions about boutiques outside of New York.

MR. O'HARA: In or outside of New York. I am talking about boutiques in general, your Honor. I was only trying to ascertain outside the City -- for example, the witness named Peck & Peck. I don't think from the point of view of relating that to a city, for example, like Poughkeepsie,

a boutique there that would have any kind of relationship. It would look like a department store in Poughkeepsie, Peck & Peck. But from the point of view what one finds in a boutique be it Peck & Peck or outside I would like the witness to tell us, if he has the experience.

A Yes, sir, I have. I have visited in Chicago, Los Angeles, San Francisco stores of small size of which there are two or three personnel, selling personnel, and they carry the merchandise of the nature and type that I described.

Q Is that all the merchandise that they carry, Mr. Levinsohn?

A No, not every store carried all the lines, but if they were women's -- a boutique they generally carried those items that I mentioned.

Q Mr. Levinsohn, as I recall all the items that you mentioned were textiles. Do they carry anything outside of textiles?

A Jewelry, might be women's costume jewelry. No, I don't believe so.

Q Would they carry soap?

A No, no soap.

Q Would they carry fragrances?

MR. SHENIER: That is a leading question, your Honor.

MR. O'HARA: Not at this point.

THE COURT: What I want to find out, though, are you asking him do they carry these things other than textiles generally?

MR. O'HARA: Yes.

THE COURT: I wondered if you would ask him whether they carry any items by Vera.

MR. O'HARA: They carry the items he testified to.

THE COURT: The question was as to all textiles. I didn't understand whether these other items were items manufactured by Vera or not.

MR. O'HARA: No, I didn't intend the question to be anything manufactured by Vera.

THE COURT: All right, go ahead.

Q Mr. Levinsohn, I want to know, I asked specifically the question fragrances.

A No, sir.

Q Have you ever been in Martha's --

MR. SHENIER: The answer is no; is that right?

THE COURT: Yes.

Q Have you ever been in Martha's in New York?

A No.

Q Going to the department stores, are Vera products carried in the department stores?

A Yes.

Q For example, in the City of New York can you name some of the department stores where Vera products are sold, to your knowledge?

A Yes. Macy's, Gimbels, B. Altman Company, Lord & Taylor, Arnold Constable, Peck & Peck, Plymouth Shops, B. Gertz Company, Abraham & Strauss, Martins.

Q Offhand, Chicago?

A Chicago, yes, Weiboldt, Marshall Field's, Carson, Pirie & Scott, Casual Corners, which is a chain of small specialty shops.

Q Los Angeles?

A Los Angeles, Bullock's, Joseph Magnin, Casual Corners, the stores I mentioned. I think there is May Company out there, and others at the moment I don't immediately recall.

Q In department stores, do they carry practically a full line of consumer goods at least so far as it relates to the personal adornment of the person?

A Yes.

Q And that would include hair grooming items; is that right?

A Would you repeat?

Q I say, that would include hair grooming items?

MR. SHENIER: I object to the leading questions.

Don't testify.

THE COURT: The point is I suppose you need it on the record, but I am fairly familiar with what items are carried in department stores. I have been around for a while and I have been into some of these places. I don't really see, Mr. Shenier, you are being hurt by that question. If we need it on the record, get on the record what they carry.

All right, Mr. O'Hara; proceed.

Q The question was, Mr. Levinsohn, does it include hair grooming items.

A Yes.

Q Cosmetics?

A Yes.

Q Fragrances?

A Yes.

Q And, of course, all the other items of apparel that we customarily wear?

A Yes.

Q During the period that you were with Vera you mentioned that the products of Vera were advertised and promoted; is that correct?

A Yes.

Q And they were advertised and promoted both to the trade and to the public; is that correct?

A Yes.

Q Did Vera engage in any cooperative advertising?

A Yes.

Q What is cooperative advertising?

A It is an agreement to share in the expense of the advertising, sharing between the customer and Vera.

Q The customer being the department store, boutique or other outlet?

A Yes.

Q And from time to time would there be any special promotions as it related to Vera particularly?

A Yes.

Q What form would those take?

A Vera merchandise as produced by the company in its various lines would be advertised in a full page ad, for example.

Q No, out of cooperative advertising now, and I am talking about any special in-store promotion.

A Oh, I beg your pardon. Yes, stores would run special promotions and establish the term boutique in the department stores of Vera products.

Q In other words, a small area would be allocated to Vera products alone; is that right?

A Yes, that is what I mean by boutique within the

department store.

Q In the course of Vera's business were there retained copies of the advertisements and ads and promotional matters that were run?

A Yes, sir.

Q And also copies of labels used in the clothing?

A Yes.

Q At my request did you take from those files and have taken under your direction samples of advertising and labels and promotions and placed in display form in books?

A Yes.

MR. SHENIER: May it please the Court, before these exhibits are introduced, this complaint was filed in 1971 and, of course, after the complaint was filed they could have put on a big campaign in an effort to show how wonderfully they advertised these products. I think everything after the filing of the complaint should not be admitted.

MR. O'HARA: Your Honor, in an equity case everything up to the time of the decree is permissible in order to establish relief.

I have a citation for you if you would like it.

THE COURT: I get very suspicious when lawyers start talking about well settled principles.

MR. O'HARA: I don't blame you.

THE COURT: You are right. You are seeking an action for trademark infringement, you are seeking injunctive relief, are you not?

MR. O'HARA: Yes.

THE COURT: All right, the objection is overruled.

I think Vera's position would be weakened somewhat if most of the advertisements that are introduced in evidence occurred after 1971.

MR. O'HARA: I woul agree, your Honor.

THE COURT: All right.

MR. O'HARA: I think that most of the advertising that I intend to present is much older than that and much more replete.

MR. SHENIER: Before these are introduced I may also distinguish between press agent releases praising Vera Neumann the designer of the fabrics. A great deal of this material they are going to submit are press agent's releases praising Vera Neumann. Vera Neumann as a person is one thing and scarves by Vera the plaintiff which is owned by Manhattan Shirt Company is quite another.

MR. O'HARA: I would say, your Honor --

THE COURT: Gentlemen, I don't need --

MR. O'HARA: No, these are all published.

THE COURT: You gentlemen are making too many

speeches. Let's get the evidence.

Q I show you what has been previously marked as Plaintiff's Exhibit 2 for identification and ask you if that's one of the folders prepared at your direction with the newspaper clippings?

A Yes.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: I have a lot of objections to some of them, your Honor. May I see them? He has got a blanket bunch of press releases and things.

I object to the one on domestics as a press release praising Vera Neumann, it has nothing to do with this case.

"Vera Goes East" again is a press release for Vera Neumann, everything on page 2 is with respect to Vera Neumann.

And the next is an article by Vera Neumann, "Designer Extraordinaire."

Again in 1969 this is a press release by Vera Neumann.

THE COURT: Is Miss Neumann being promoted in connection with Vera?

MR. O'HARA: The trademark derives from her name, she is a famous designer and the secondary meaning that the products have attained in part is because of the publicity that has related to Mrs. Neumann and associated with the goods.

If your Honor will note what is said to be a press release doesn't say that she has beautiful hair or something like that. It is all related to the products that she designs, the original designs and the business that she is engaged in, all of which goes to the public and makes known who Vera is and presumably creates a demand on the part of the consuming public for products which emanate from that source.

THE COURT: What connection does she have with the company?

MR. O'HARA: She was a principle stockholder, founded the company with her husband. She will testify, your Honor.

THE COURT: Manhattan Industries --

MR. O'HARA: Manhattan Industries acquired that company. She is also an officer of that company. It is a wholly owned subsidiary.

THE COURT: I will accept the exhibits and we will see what the evidence unfolds in respect of these -- I have forgotten the name -- the individual connected with it.

Q I show you Plaintiff's Exhibit 3 for identification and ask you if that consists of copies of advertisements and ads which appeared or stories in the public press and magazines which related to Vera products.

A Yes.

Q Was this prepared under your direction in the files of the company?

A Yes.

MR. SHENIER: The material in here, the press agent's product for Vera Neumann, I object to on the same ground, your Honor. When they advertise Vera products I think that's inappropriate.

THE COURT: All right.

Is it your testimony that all of those advertisements that are in Exhibits 2 and 3 are part of the promotional campaign described to promote the Vera goods?

THE WITNESS: The sale of Vera goods, yes, the advertising was done for that purpose of promoting Vera, the sales of Vera products.

Q I show you Plaintiff's Exhibit 4 for identification and I simply ask you if that is further advertising over a period of years taken from the files of the company?

A Yes.

Q I would particularly, if I may, refer you --

MR. O'HARA: I'm sorry, I have it in evidence.

MR. SHENIER: Again, these consist largely of "Vera Does This, Vera Does that," and it is a press agent's effort to aggrandize Mrs. Vera Neumann and I don't know whether it is an ego trip or what, but nevertheless there may be residual

effects that her linens or scarves may acquire some acceptance. But it is not advertising of the product.

THE COURT: All right. They are all received.

(Plaintiff's Exhibits 2, 3 and 4 marked for identification received in evidence.)

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Q You mentioned before the matter of cooperative advertising. I specifically refer you now to what has been designated as Plaintiff's Exhibit 4 and particularly 4-Y thereof, what appears to be a full page advertisement, and ask you if that is an example of the cooperative advertising that you mentioned in your previous testimony.

A I don't know whether it was fully paid for by the store or whether it was cooperatively paid for.

Q If it was fully paid for by the store, do you know whether or not it was a practice of Vera to provide to stores or other outlets any mats or materials that they might utilize for the purpose of advertising?

A No.

Q You didn't provide them as far as you know?

A No, this is art work of the store.

Q That is art work of the store, is that right?

A That is art work of the store.

Q That is a newspaper advertisement, a page advertisement, is it not?

A Yes.

Q Mentioning from the front of the book -- is this an article or advertisement, 4-A --

A This is a copy, this is an advertisement.

Q Paid?

A Paid for, yes.

Q I refer to 4-E, where it is referred to as B. Altman. What type of material is this?

A This is store paid publicity in which they promoted the sale of a Vera design made on place mats which were called Vera's strawberries and these place mats were in the restaurant at Altman and things were served on them.

Q I notice that in this book particularly most of these relate to the early 1960s, is that correct?

A Yes.

Q What proportion of the whole would you say is represented by the exhibits which I have produced and which you have examined here today?

MR. SHENIER: Your Honor, I haven't objected to any of these on the ground no foundation has been laid, but you asked that the exhibits be marked individually. They haven't done that. They put umteen exhibits in one envelope and can't segregate them. A lot of them were after the filing of the complaint, a lot of them were paid for and advertised in dif-

* * *

to the public.

MR. SHENIER: Thank you, your Honor.

THE COURT: I think also, Mr. Shenier, on any of those advertisements I am going to give you time. If there are any of those that you want particularly to bring to my attention, I will give you whatever time you need to look at them and indicate what you think I ought to be particularly looking at when I review the exhibits.

MR. SHENIER: Thank you, your Honor. We objected to them on those grounds originally, that they were irrelevant, that they were press agents' releases of Vera Neumann and I know, your Honor, since there is no jury here and I have no objection to receiving all the evidence, but I know you will give them the weight they deserve. I just want to bring that to the Court's attention.

Q I show you what has been marked Plaintiff's Exhibit 5 for identification with a lot of subdivisions. Would you please take each of the articles and indicate to his Honor what it is? Can you identify them?

THE COURT: Are they marked 5-A, B, C for identification?

MR. O'HARA: It is marked Plaintiff's Exhibit 5 and each one of them has a submark on it. I want to know if the witness can tell what each one is. Mr. Shenier wants each one

and I want to give him each one.

MR. SHENIER: When I examined these I objected to them en masse on the ground there was no foundation laid and they are all subsequent to the filing of the complaint and they weren't marked individually when I examined them. They were just in one big folder.

MR. O'HARA: They are marked.

MR. SHENIER: They are marked now, but weren't when I saw them.

Q On each one you are going to have to look for the mark and say 5-K and tell us what it is.

A 5-K is a booklet hand printed by Vera for distribution in all retail outlets, and Vera did give these to the retail outlets. This book describes the way scarves should be tied by the ultimate consumer.

Q When was it distributed?

A This one I believe is possibly five, six years old. There were others in the time when different fashions of tying developed, but this one was published by Vera and distributed to stores with the purchase or as a free distribution to elderly consumers.

MR. SHENIER: No objection. There is no date on it, so I can't object to it.

MR. O'HARA: The witness testified it was five or

six years ago.

A This was -- Plaintiff's Exhibit 5-H, this is a sales aid to the buyer of the department stores and shops that I spoke about describing how Vera merchandise might be displayed in their stores for best advantage of display.

MR. SHENIER: This is dated 1973, your Honor.

THE COURT: Yes, I know, but we have been through that. He is entitled to have them introduced up to the time of the trial.

MR. SHENIER: May I just make the continuing objections?

THE COURT: Of course. You object to any exhibit or any act, anything beyond the time the complaint was filed.

MR. SHENIER: So that your Honor will take into consideration the weight you accord to it.

THE COURT: Very well.

MR. SHENIER: I don't want to delay the trial.

THE COURT: I understand.

A 5-H, at an anniversary of Vera's business, I believe it was there, was a retrospective review showing at a gallery in New York at which this is described, and Vera had this sent to the buyers and accounts of the company for publicity purposes.

5-I, this is an enclosure with mailings to the trade

announcing and advising of the various showrooms that Vera has for her various products and the distribution center in New Jersey, all sent to the trade.

Q Approximately do you know about the date when this would have been?

A Yes, about three years ago.

Q About three years ago?

A Yes.

Q That would be '71, is that correct?

A Yes.

Q Now, I show you 5-G.

A 5-G, this, too, is a publicity piece sent to the store buyers and managements describing the retrospective of the Vera 25th year in business. This is through 1970.

5-C, this is a sale aid to buyers describing also how merchandise might be best displayed to best advantage for the sale of the Vera products.

Q Have you any idea when that was distributed or circulated?

MR. SHENIER: May it please the Court, I would like to add another objection to the directions to buyers. That's not the general public who buy Vera products. This is to the store buyers and personnel in the store.

THE COURT: I don't know whether that's so or not.

The issue on the trademark is with regard to what the market is. One of the markets I am getting is the trade itself. In other words, from what I hear in the testimony now the department stores and boutiques buy the goods and sometimes with Vera or alone they may publicize the matter to the public. But one of the markets is that area of the trade. I am still trying to follow what goes on, Mr. Shenier.

Q I think the question was can you tell us approximately when it was distributed.

A I think this was 1973.

Q That was also in '73.

A Yes.

5-D, this is a publicity piece by Vera to the trade showing the form in which the Vera design was created from the Vera painting and the development of the designs of the various mechanical steps changing a design into a commercial article.

5-L, this is a Vera print entitled "These publications" which was sent to the trade and this particular one was after a very wide promotion of merchandise at Jordan Marsh in Boston and Vera used the publicity that was done by Jordan Marsh. She sent it to other accounts in the country showing these ads and the way the publicity was done.

Q Exhibit 5-M and N are similar, but relate to simply

other stores; is that correct? They were to be used at different times?

A This is Jordan Marsh -- and this was a similar piece done at Union Company, Columbus, I believe it was.

This shows the publicity of various stores in the country, Hutzler in Ohio,and Kaufmann in Pittsburgh, and Liberty House in Honolulu, and G. Fox in Hartford.

5-N, this is a publicity piece giving notice to the trade that Vera had been honored by the National Home Fashions League with an award and National Associate of Interior Decorators, and another -- oh, the Smithsonian Institute all honored Vera by awares, and in the Smithsonian Institute by an award and the placing of one of her designs in their collection.

5-A, this is a publicity piece for distribution -- this was distributed to the trade, also for the adjusted displaying of Vera merchandise.

5-J is a bookmark which was distributed widely when Vera produced a line the theme of which was the Far East, and this was the publicity piece that went to consumer as well as to store management and buyers.

5-F, this is a publicity piece that was distributed to stores in connection with the Linens by Vera Division in which the art of table setting was described by showing how Vera napkins might be folded and table cloths coordinated in

color with table settings and the use of place mats and arrangements.

This, too, is a publicity piece for the Blouses by Vera Division which shows the development of a Vera print into an article of apparel showing the rough form of outline, how the print is -- how the garment is printed in sections and then the ultimate appearance of the garment, sewing and finishing, also sent to the trade generally and distributed to ultimate consumers.

(Plaintiff's Exhibit 5 and Plaintiff's Exhibits 5-A through 5-N marked for identification received in evidence.)

Q I show you what has been marked as Plaintiff's Exhibit 6 for identification and ask you if you recognize that and can identify it.

A Yes.

Q What is it?

A This is an advertising piece which shows the development of a Vera design which was used by a licensee of Vera's Burlington Industries for the sale of their sheets,and pillow cases,and bedspreads, and blankets. This was a piece that went out to the trade generally to publicize the event of the licensing and the sale of the Burlington products designed by Vera, and the use of the Vera trade - Vera name.

Q You mentioned Burlington as a licensee. Prior to Exhibit 6 having been distributed, as you testified, had Vera entered into a license with Burlington?

A Burlington is a licensee of Vera's.

Q Prior to the time that this material was distributed, a license agreement had been made with Burlington; is that correct?

A Yes.

Q And that license agreement was for what?

A For the use of Vera designs on their products, the products they would sell, and also the use of the Vera name identifying the products.

MR. O'HARA: I offer Exhibit 6 in evidence.

MR. SHENIER: I object to it on the ground it is undated, poor foundation laid and it relates to Burlington products, it doesn't relate to plaintiff in this case.

THE COURT: I question it my myself. Apparently she is a designer of a great deal of talent, Vera Neumann. On the last exhibit the witness was talking about various honors being given to the designer, Miss Neumann.

MR. O'HARA: Yes, your Honor.

THE COURT: I am not clear as to what now that has to do with this plaintiff.

MR. O'HARA: Your Honor, may I say this: Before

the case is over you will hear many other names, many of which will be familiar to your Honor of famous designers whose names have been used in connection with textiles. For example, I just looked at my tie, Christian Dior. And the purpose of that proof will be to establish that those famous names - that the market with respect to those famous designers has extended to the very line of goods which the defendant is selling here and that's the natural extension of the market of Vera.

Anything that enhances the name Vera, or that would enhance the name Bill Blass, Christian Dior, Norell or any other famous designer creates the market, and if the product bears that name it has a consumer acceptance immediately because of the fame of the name attached to the goods. It is essentially what trademarks are all about. It is the very basis of the whole structure.

THE COURT: He is not clearing up my difficulty at all.

MR. O'HARA: I'm sorry.

THE COURT: I am willing to accept that. I am talking now about the license agreement -- I'm sorry, not the agreement, but apparently from what I understand is that Miss Neumann licensed Burlington Mills to carry on her designs.

MR. O'HARA: The plaintiff did, not Miss Neumann,

the plaintiff, your Honor, the same way as in all these other instances.

THE COURT: All right. I want to understand when we are talking about the plaintiff and when we are talking about Miss Neumann's designs. You say they are one and the same in terms of the public, in terms of the fact that the plaintiff owns the design, I am not clear on that.

MR. SHENIER: May I be heard, your Honor, to answer the point that my learned brother just made.?

THE COURT: Yes.

MR. SHENIER: Christian Dior, Balmain, Balenciaga are all haute couturiers. Vera makes textile products, scarves - that is what she started in. We will show, for example, these scarves are mass produced. Mr. Levinsohn just said he had these made abroad and I am going to bring that out.

My point is that anything that's mass produced in foreign countries can't be considered high fashion in the same class with Balmain, Christian Dior and all the famous designers. What they are saying here is a sophistry. It is like saying this: All men are mammals, all whales are mammals, therefore men are whales.

Because Miss Neumann is a good designer does not make her high fashion, because she sells a lot of products in cheap stores at a few dollars a copy.

THE COURT: Does that make any difference? If she has a valid mark and so forth, regardless of the fact whether you regard her as a high couturier or merely a designer of a mass product, the point is the question I have to face is not whether Miss Neumann is high fashion, but whether or not she has a valid trademark that you are infringing.

MR. SHENIER: She has a valid trademark for her goods. We don't sell her goods, we sell different goods. The question here is -- and it is brought out in Polaroid, all those cases in the Second Circuit -- the question here that you are going to have to decide on the basis of the evidence is whether or not this company has a right to branch out and get a monopoly on the trademark Vera to lines other than her own, one that she has never been in, one she has never made.

Now, my learned brother is desperately trying to equate Vera Neumann with Christian Dior as he just did, and this is not a fact. And that is the whole point.

THE COURT: I didn't accept that. I thought he was attempting to address himself to a question I raised. As it turns out neither one of you answered the question, so let's proceed.

MR. O'HARA: I will produce witnesses and I expect Mr. Shenier will produce like witnesses from what he has told the Court.

THE COURT: All right, the objection is overruled. I will allow it.

(Plaintiff's Exhibit 6 marked for identification received in evidence.)

Q Incidently, I believe you may not have testified that the plaintiff was acquired by Manhattan Industries.

A Yes.

Q Is that correct?

A Yes.

Q And they are the makers of Manhattan Shirts?

A Yes.

Q Do you know what other products Manhattan Industries makes?

MR. SHENIER: It is irrelevant what Manhattan makes. We are talking about Vera which is a wholly owned corporation. If a department has 13 different industries, the fact they acquire one industry doesn't give them the use of all the others --

MR. O'HARA: I am not going any further. I simply want to know if he knows of other products.

THE COURT: This turns on the Vera products, not what Manhattan Industry makes.

MR. O'HARA: Your Honor, I intend to show Manhattan Shirts also puts out a cologne under the word Manhattan.

And if you went to Rogers Peet to buy a shirt and you saw Manhattan Cologne where would you assume it came from? The same way in this case if you came into a store and saw Vera scarves and saw Vera products where do you think it came from?

THE COURT: That is not the question you asked him. Come, gentlemen, let's focus on this case.

MR. O'HARA: I withdraw the question.

THE COURT: If that's what you want to establish then you can do that by asking specific questions, not asking him to tell me what else Manhattan is making.

MR. O'HARA: I am accused of leading, your Honor. If I asked him if Manhattan makes cologne Mr. Shenier would say I am leading this witness.

MR. SHENIER: I think what Manhattan makes is irrelevant, your Honor.

THE COURT: If he shows that the textile manufacturers and sellers in some instances go into the sale of perfume and things of that kind, I suppose he can show it. He can't show it by just one instance, but he can show it and I suppose it may have some bearing on the point.

All right, Mr. O'Hara, let's proceed.

MR. O'HARA: I withdraw the question.

Q Mr. Levinsohn, I show Plaintiff's Exhibit 10 for identification consisting of several subarticles and ask you

if you can identify that, please?

A Do you want me to mention the exhibit numbers?

Q No, you don't have to mention each exhibit number. Just tell us if you identify the contents of the books.

A These are neck ties, men's neck ties, and this is a blouse.

Q There are three blouses and several neck ties; is that correct?

A Several neck ties and several blouses.

Q Are those products of Vera?

A Yes, sir.

Q Approximately when would these particular products have been sold on the market?

A These are not new. These ties are possibly five years old, six years old, and the garments are simply old line.

Q Are they representative, however, of ties and blouses sold by Vera, the plaintiff?

A Yes.

MR. O'HARA: I offer them in evidence.

THE COURT: I am trying to follow your testimony. That's the first time I have heard that Vera was in the men's line at all.

MR. O'HARA: I think you are correct, your Honor.

THE COURT: Most testimony I got it appears Vera was

exclusively in women's accessories and apparel.

THE WITNESS: Yes, sir, that is true. We did make an attempt to get into various markets on occasion.

THE COURT: I see.

THE WITNESS: We determined and discovered that we had not the merchandise for the trade.

MR. SHENIER: In other words, you are not selling these to men at all?

THE WITNESS: That is what I said.

MR. SHENIER: This was an attempt --

THE WITNESS: No, we marketed them but let's say --

MR. SHENIER: You discontinued that?

THE WITNESS: We are not making ties now.

Q How long since you made ties?

A Perhaps two seasons -- within a year.

Q What about blouses?

A Oh, blouses we made for many years.

Q You still do?

A Yes, very active in the blouse business.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: No objection.

THE COURT: All right.

(Plaintiff's Exhibit 10 marked for identification received in evidence.)

(Recess.)

MR. O'HARA: Your Honor, I have the Comptroller of the company here to testify on advertising and sales and Mr. Shenier has agreed I may withdraw Mr. Levinsohn at the moment so we can get his testimony. It should be rather brief.

THE COURT: For your planning, gentlemen, I am going to have to suspend today an hour earlier than usual. I will suspend at four o'clock instead of five. I am just advising you of that so you can plan the rest of the day.

All right.

M A R T I N J A C O B S O N , called as a witness, being first duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Jacobson, by whom are you employed?

A Scarves by Vera.

Q In what capacity?

A Vice President and Comptroller.

Q In your position as Comptroller are the books of account of the company within your control?

A Yes, sir.

Q And you are familiar with them?

A Yes.

Q At my request did you prepare from the books of the company a schedule of the advertising expenditures of the company for approximately the last ten years year by year?

A Yes.

Q Did you also prepare a schedule of the sales of the company in three categories of scarves, blouses and linens?

A Yes.

Q In connection with the schedule you prepared are there any figures that are included from licensees such as Burlington or what have you?

A No.

Q These are the sales of the plaintiff Vera and its divisions, et cetera; is that right?

A Yes.

MR. O'HARA: Please mark this as Plaintiff's Exhibit 7 for identification.

In view of the fact we premarked exhibits and this is one not premarked I suspect we already have a premarked 7. I have this listed in my schedule as Exhibit 24. May we give it that number, Exhibit 24 for identification.

(Plaintiff's Exhibit 24 marked for identification.)

Q Is this the schedule, Plaintiff's Exhibit 24 for identification, which you prepared?

A Yes.

MR. O'HARA: Mr. Shenier, I provide you with a copy of the exhibit for identification and also a typed copy thereof, the only difference being the addition of the figures and also the addition of the zeros for the thousands which do not appear in the handwritten copy.

Do you object if I substitute a more ledgible typewritten copy for what has been marked as Plaintiff's Exhibit 24 for identification?

MR. SHENIER: Not at all.

Q I show you Exhibit 24 for identification, and with the qualification which you have just heard from your nandwritten copy I ask if that's the expenditure of schedules and sales which you prepared at my request.

A It is.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: No objection.

(Plaintiff's Exhibit 24 marked for identification received in evidence.)

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Q Mr. Jacobson, I notice that on 24 in evidence that where you have advertising expenditure there isn't any dollar signs next to the figures as it now appears. I assume those are all dollar figures; is that correct?

A It is correct.

Q And above that where it lists in the millions,

scarves, belts, blouses, linens, et cetera, those are the individual numbers of those items sold in a given year; is that correct?

A No, they are dollars.

Q Are these dollars or are they the number of items?

A Those are dollars.

Q That's the dollar volume then of scarves sold; is that correct, in each year?

A Yes.

Q Not the numbers?

A No.

Q Very good.

That's the wholesale price, the price at which they were sold by Vera, not the retail market price; is that right?

A That is correct.

THE COURT: Vera doesn't do any retail sales, do they?

THE WITNESS: We do not.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Jacobson, why did you not bring in the advertising figures from the first advertisement in 1957, '58, '59, '60 and '61?

A Mr. O'Hara just asked me for the last records that

we had available to us, readily available to us, and those were what I had.

Q Thank you.

I show you Defendant's Exhibit D which was furnished to me by the plaintiff and ask you if you recognize that.

A I do not.

Q Those figures were furnished to me by your company. Have you any doubt that those are correct?

A I have no basis for knowing whether they are or they aren't. I didn't prepare this.

MR. O'HARA: I don't know what it is.

MR. SHENIER: You furnished that to me. I want to introduce it in evidence.

MR. O'HARA: I am sure you can identify it.

MR. SHENIER: I offer Defendant's Exhibit DV which was furnished to us by the plaintiff, advertising expenditures from 1957 through 1961, and it has been premarked.

MR. O'HARA: No objection.

xx (Defendant's Exhibit DV received in evidence.)

Q I notice that the advertising expenditures increased in 1970, '71 and in recent years over the advertising expenditures in earlier years. Can you account for that?

A Advertising expenses usually are a direct percentage of sales, and our sales have increased since then.

Q Most of this advertising is cooperative advertising for department stores and sales people; is that correct?

A Yes.

Q You do very little institutional advertising of Vera's per se; is that correct?

A What do you mean by very little?

Q This is not broken down. How much of this is done by Vera per se as distinguished from cooperative advertising of the stores, Gimbels, Lord & Taylor, and so forth?

A The greatest proportion of what you have there I would say would be cooperative advertising.

Q What do you mean by the greatest proportion, what percentage? Can you give us a figure?

A It varies from year to year.

Q Give us your best recollection or estimate.

A May I see that?

Q Certainly.

MR. O'HARA: To shorten it, your Honor, I am willing to concede that any part or all of it can be cooperative advertising so far as I am concerned for the purposes of this case. I haven't any objection.

THE COURT: All right. The figures, if it is cooperative, Mr. Jacobson, do those figures represent in advertising the sums of money spent by Vera?

THE WITNESS: Yes.

MR. SHENIER: These were after the filing of the suit, your Honor. I trust you will give it the weight --

THE COURT: Yes.

MR. SHENIER: No further questions, your Honor.

(Witness excused.)

S A U L P . L E V I N S O H N , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. O'HARA:

Q Mr. Levinsohn, I must apologize, I have forgotten that you have some hearing impairment.

A Yes.

Q And I will try and keep my voice up and if at any time you do not hear my question or it is not clear to you completely, please ask me to repeat it.

Mr. Levinsohn, during the period of time that you were with the plaintiff were you aware of any other manufacturer or retailer marketing any goods under the word "Vera" other than and excluding the defendant in this suit?

A No.

Q Did there come a time when you did learn that goods were being marketed under the name Vera other than those of the plaintiff?

A Yes.

Q Approximately when was that?

A I believe it was in 1969 or '70.

Q And what was the nature of the information, without repeating any conversations that may have been had with others?

A The defendant's product was seen in a retail store window.

Q Where was that store?

A On 14th Street and 7th Avenue, New York City.

Q Did you go to that store?

A Yes, sir.

Q Did you see products of the defendant displayed for sale in that store?

A Yes.

Q Subsequently did you see any advertisements for sales help by the defendant, particularly in connection with the sale of products bearing the name Vera?

A Yes.

Q And where did you see that?

A In the window and -- of the store in which the defendant's products were seen, in the window and in the store there were displays -- display pieces.

Q Mr. Levinsohn, I ask you if you saw in any publication, a newspaper, a publication, anything relating to an advertisement for sales help? Did you ever see any such thing?

A Oh, I beg your pardon, I understand the question now. Yes.

Q Where did you see it?

A Women's Wear Daily, I believe, and/or Daily News Record Publications.

Q As a result of that, did you or someone at Vera to your knowledge consult with counsel?

A Would you repeat that?

Q As a result of seeing these goods in that advertisement did you or someone else at Vera to your knowledge consult with their attorneys?

A Yes.

Q As a result of that, do you know whether or not a letter was written to the defendant with respect to the sale of goods under the name Vera?

A Yes.

MR. O'HARA: Mr. Shenier, would you concede that the letter of August 3rd, '70 was received by your client?

MR. SHENIER: Yes.

MR. O'HARA: At this time, your Honor, I would like to have this offered in evidence as Plaintiff's Exhibit 23.

xx (Plaintiff's Exhibit 23 received in evidence.)

MR. O'HARA: Your Honor, I am going to try and retain the exhibits in, I hope, reasonable order as they go

in and file them over here, and if any occasion arises I will have them rather than leave them with the clerk or someplace else.

THE COURT: I think what you better do so I can follow the case better is allow me to look at these exhibits.

MR. O'HARA: I'm sorry, I think I should.

THE COURT: I will give them back to you.

All right.

Q Subsequent to seeing the goods in the store on 14th Street, did you observe any advertisements with respect to Vera products other than those of the plaintiff?

A Yes.

Q And I show you what has been marked Plaintiff's Exhibits 16-A and 16-B and ask you if you can identify those two.

A Yes.

Q What are they, Mr. Levinsohn?

A They are advertisements for the Vera perfume products.

Q Which appeared in the public press?

A Yes, in two different publications.

Q Is there a date typed on each of these copies?

A Yes.

Q Is that to the best of your recollection at or about the time that those ads appeared?

A Yes.

MR. O'HARA: I offer them in evidence.

MR. SHENIER: I will see if I have a more legible copy; I don't know.

THE COURT: These are advertisements of the defendant; is that correct?

MR. O'HARA: That is correct, your Honor, those are advertisements of the defendant.

MR. SHENIER: No, they are advertisements of Gimbels.

MR. O'HARA: Yes, advertisements of Gimbels of the defendant's products.

(Plaintiff's Exhibits 16-A and 16-B received in evidence.)

xx

MR. O'HARA: No further questions.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Levinsohn, you spoke of having seen the defendant's product in a store. Would you be good enough to tell the Court what kind of a store that was?

A It was a store that sold records and music.

Q Phonograph store?

A Yes.

Q They sold no scarves?

A I don't --

Q No fabric products?

A No.

Q Nothing made out of fabric at all?

A I can speak for scarves, I can't speak for other products, other textile products.

Q They sold records?

A Yes.

Q But they could have sold fabrics?

A I didn't see any.

Q During the course of Vera's business they used many trademarks; is that correct?

A Many trademarks?

Q Yes.

A No.

Q No?

A Not many.

Q Well, I show you United States Patent Office registration 593,295, the Veraline, registered Scarves by Vera.

A Yes, that was a trademark of Vera's.

MR. SHENIER: I ask that this be marked. I have already marked it Exhibit A.

Q Are you using this trademark any longer?

A It has been used from time to time. It was not a trademark that was used as Vera, identifying the company.

Q I asked you whether you are using Veraline to identify your produce today?

A No.

MR. SHENIER: I offer Defendant's Exhibit A in evidence.

xx (Defendant's Exhibit A received in evidence.)

Q I show you trademark registration 683,332, registered in the United States Patent Office by Scarves by Vera and ask you if you recognize that trademark.

A Yes.

Q Are you using that trademark today?

A Yes.

MR. SHENIER: I offer Exhibit B in evidence.

MR. O'HARA: No objection, your Honor.

xx (Defendant's Exhibit B received in evidence.)

Q I show you registration 748,841 for Veracloth, registered Scarves by Vera, Inc., the plaintiff herein.

A Yes.

Q And ask you if you recognize that?

A Yes.

Q Are you using that trademark today?

A No.

MR. SHENIER: I offer Exhibit C in evidence.

MR. O'HARA: I have no objection, but I don't know

what relevance it has.

xx (Defendant's Exhibit C received in evidence.)

Q I ask you trademark registration 759,284, registered by Linens by Vera, Inc., is that related to plaintiff in this case?

A Yes.

Q Do you recognize that trademark?

A Yes.

Q Is that being used today?

A Yes.

Q It is being used today?

A Yes, I believe it is.

Q Did you give a deposition in this case on October 29th, 1971?

A Yes.

Q Were you asked this question and did you make this answer: "I ask the reporter to mark registration for Veramat as Defendant's Exhibit D"

It was marked.

"Are you familiar with this registration." You answered yes.

"Do you still use the trademark Veramat?

"A. I don't believe so." Do you want to change your answer?

A I won't change my answer. I think I will have to qualify my answers.

Q Which answer was correct? You were under oath then and are under oath now. Which answer was correct?

A At that time the mark was not being used. Since that time the mark has been used.

Q It has been used?

A Yes.

Q When?

A In the linen division.

Q When?

A The specific date I can't tell you the purpose the Vera trademark has been taken out. It has been used again.

MR. SHENIER: I ask that Exhibit D be admitted in evidence.

MR. O'HARA: I don't see the relevancy of it at all.

THE COURT: Of course, it is relevant. The relevancy of it as far as the defendant is concerned -- I gather what he wants to show is that not only you, but other people have used Vera as part of a mark.

MR. O'HARA: Wait a minute. This registration is not somebody else's, your Honor. This is our registration.

THE COURT: But I assume he is going to show someone else's.

MR. O'HARA: This doesn't relate to someone else.

THE COURT: All right, Mr. O'Hara, the objection is overruled.

(Defendant's Exhibit D received in evidence.)

THE COURT: In what connection is that used?

THE WITNESS: Place mats.

THE COURT: Linens and place mats?

THE WITNESS: No, place mats.

Q I show you registration 775,874, Veraterry.

A Yes.

Q I ask you if that mark is being used.

A No.

MR. SHENIER: I offer Exhibit E in evidence.

MR. O'HARA: No objection.

(Defendant's Exhibit E received in evidence.)

Q I show you registration 776,214, a copy thereof, United States Patent Office registered October 6, 1964 for Verasheer, scarves, and ask you if you recognize that.

A Yes.

Q Now the word Vera in this registration is used like very. Are these Vera scarves?

A I can't answer.

MR. O'HARA: This is a document. It is written out. I object.

THE COURT: He can ask a question if this witness knows what line of products they use.

MR. O'HARA: That is perfectly all right.

THE COURT: That's all I understand.

MR. O'HARA: I have no objection if the question is in that form.

Q Are you using this mark at this time?

A It may be or may not be. I can't give you a factual answer.

Q On what goods do you use this mark Verasheer?

A On a scarf.

Q What kind of a scarf?

A A lady's chiffon scarf.

Q During your deposition on October 29th, were you asked this question and did you make this answer:

"Q. On what goods?

"A. We used it on a fabric of lightweight nature and scarves and chiffons."

Is that correct?

A Lightweight fabrics are chiffon scarves.

Q They are sheer fabrics, are they not?

A Yes.

Q So Verasheer would be sheer fabrics?

A No, it does not mean that, it means Vera's sheer

fabric, not "very". It has no indication of the degree of sheerness such as very sheer.

MR. SHENIER: I move the answer be stricken as argumentative.

THE COURT: I think the question was also argumentative, so I am going to allow both of them in.

MR. SHENIER: I offer Exhibit F in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit F received in evidence.)

Q I show you registration 778,215, which has been identified as Defendant's Exhibit G for Veracrepe.

THE COURT: Excuse me, you didn't know whether this was sheer?

THE WITNESS: That's right.

THE COURT: I am sorry.

MR. SHENIER: All right, your Honor

A What was your question?

Q The question is do you recognize that trademark?

A Yes.

Q Is it still being used?

A Here, too, I am not sure if it is in current use. I doubt it.

THE COURT: What is the name of that?

MR. SHENIER: Veracrepe, your Honor.

Q During your deposition on October 29th were you asked this question in respect of this Exhibit G, Veracrepe:

"Q. Did plaintiff own that registration?

"A. Yes, we do.

Q. Were you still using that trademark?

"A. We are not using it."

A Correct.

Q Do you want to change your answer?

A No, I am not changing the answer. I am just not sure of whether since I have departed from the firm whether they have included it in their line for the purpose for which the trademarks -- those particular trademarks were intended.

Q I am not asking you to testify to something you don't know. You testified you were not using it, you left the company this year. Up until the time you left the company --

A Right, I didn't. That deposition was answered as I knew then.

THE COURT: That is all he can do.

I think, as I understand the testimony, when he answered the questions at the deposition they were not using it, but at the present time he is not sure as to whether they are using it or not. Isn't that what your testimony is?

THE WITNESS: Yes, sir.

MR. SHENIER: He is not sure they are using it, he left the company?

THE COURT: Yes.

MR. SHENIER: As far as he knows, his testimony. I don't want conjecture, your Honor.

I offer Exhibit G in evidence.

xx (Defendant's Exhibit G received in evidence.)

Q I show you registration 842,895 for Verainseparable.

A I recognize that.

Q Would the Verainseparable mean very inseparable?

MR. O'HARA: I object to his asking the witness what the word means. It is a trademark registration he is showing him.

THE COURT: Of course. You may ask him what goods it was used on.

MR. SHENIER: I can envision an advertising conference where they adopted a name where the say "This is a clever pun, very inseparable, these two go together.

MR. O'HARA: We are not suing on that trademark. We are suing on Vera. This happens to have the same words in the mark and it may be some line of goods --

THE COURT: Let's not waste time. Proceed.

Q Do you know whether or not the mark was adopted because it was very inseparable, they go together possibly?

A These are coordinated garments, not garments attached one to the other.

Q I understand, they were coordinated, they were inseparable.

A Coordinate -- I don't know how to answer the question.

THE COURT: I don't really know what difference it would make if it were adopted for something like that. I don't understand.

MR. SHENIER: It shows it is a weak mark, your Honor.

THE COURT: Why would it show it is a weak mark?

MR. SHENIER: Because a lot of other people are using Vera as we will bring out later on.

THE COURT: The fact that they are using Verainseparable and you say it is very inseparable --

Q Are you still using this mark Verainseparable?

THE COURT: Are there two words to that mark?

THE WITNESS: No, your Honor.

THE COURT: One word.

A No, it is not being used.

MR. SHENIER: I offer Exhibit H in evidence.

xx (Defendant's Exhibit H received in evidence.)

Q I show you registration 858,284 for Veraboout. Do you recognize it?

A No.

MR. SHENIER: This has been identified as Defendant's Exhibit I. I offer Exhibit I in evidence.

Q Are you still using Verabout?

A No.

MR. O'HARA: No objection.

xx (Defendant's Exhibit I received in evidence.)

Q I show you registration 898,110 which has been identified as Defendant's Exhibit J for Veraterry, and ask you if you recognize that.

A Is that the same one you showed me before?

Q No, that was Verabout. This is Veraterry.

A I recognize that.

THE COURT: You showed him Veraterry before.

MR. SHENIER: Did I?

MR. O'HARA: Yes.

MR. SHENIER: Which one was that?

THE COURT: I don't know, but it was among some others.

MR. SHENIER: I'm sorry, I have got that in twice. No, that is a different registration, it is a different number. This is for beach and bath towels. The other was for something else.

A May I look at the other first?

MR. SHENIER: The other was for scarves. They are

two different goods.

A Yes, I recognize the second one.

Q The second was for the beach and bath towels?

A Yes.

MR. SHENIER: It has been identified as Defendant's Exhibit J.

Q Are you using this trademark any more?

A No.

MR. SHENIER: I offer Exhibit J in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit J received in evidence.)

Q I show you the trademark Vera in block letters, registration 894,870 for suitcases, handbags, purses which has been identified as Defendant's Exhibit K, and ask you if you recognize that.

A Yes.

Q Have you ever manufactured suitcases, handbags?

A Yes.

Q How long?

A We -- can I qualify that answer?

Q Yes.

A We had a licensee --

Q I am not asking you about the licensee, I am asking about Scarves by Vera.

A Vera Company didn't make luggage or handbags.

Q Are you now making luggage and handbags?

A We are not now, we never did.

MR. SHENIER: I offer Exhibit K in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit K received in evidence.)

Q In respect of Plaintiff's Exhibit 16-A, advertisement in Gimbels, does it identify where the goods were made?

A It speaks of a fragrance. It doesn't say the manufacturer of the item.

Q It doesn't say imported from the House of Vera? Can't you see that?

THE COURT: What's the point? I am going to look at the exhibit, it is in evidence.

A Yes, it does say that. It says from the House of Vera.

Q Yes. You testified that you were in charge of imports; is that correct?

A Yes.

Q Is it not true that you manufacture many of the goods in Japan?

A Yes.

Q And you import this from Japan?

A Yes.

Q So the Vera scarves that you make are made in Japan, many of them, and imported into this country from Japan; is that correct?

A Yes.

Q Do you make any goods in Spain?

A No.

Q Never make any goods in Spain?

A Not scarves.

Q Any goods in Spain?

A No.

Q I show you registration 139,640, registered February 8, 1921 for Vera by Strohmeyer & Arpe and ask you if you have ever seen that registration before.

A No, I have never seen that registration.

Q You never saw that registration?

A I have no recollection of ever having seen it.

Q Did you ever receive any orders from anyone asking you for any cosmetics of any kind?

A No, I have not.

MR. SHENIER: I offer Exhibit M in evidence.

MR. O'HARA: I object to that, your Honor.

THE COURT: On what grounds?

MR. O'HARA: The mere citation of third party registrations without proof of actual usage does not tend to

weaken the mark in issue. It is further held that it assumes no knowledge on the part of the purchasing public of mere registrations in the Patent Office.

THE COURT: The objection is overruled.

MR. O'HARA: It doesn't show any usage. This mark could have been registered and not used after the first date of use.

THE COURT: The mark was renewed on the exhibit in 1961 for 20 years. That mark is apparently current.

MR. O'HARA: I have a short memorandum, your Honor, on this matter of third party registration which I would submit to your Honor.

MR. SHENIER: This is permissible in a case like this. Look at the footnotes, your Honor, third party registration.

MR. O'HARA: Does your Honor care for the memo?

THE COURT: Memo on what?

MR. O'HARA: Third party registrations, on their use and whether they are admissible or not.

THE COURT: Of course, they are admissible in terms of what they are -- what their meaning may be, so forth. That may be something else. Obviously you have the right to introduce evidence of third party registrations.

MR. SHENIER: The Second Circuit is --

THE COURT: Mr. Shenier, please, I have admitted the

mark. Let's move on.

MR. SHENIER: Thank you, your Honor.

xx (Defendant's Exhibit M received in evidence.)

THE COURT: We have to deal with trademark matters. Quite a number of them come through here. Don't act as if it is the first one I have ever tried. Let's proceed.

Q I show you Defendant's Exhibit N, Vera Smart, and ask you if you have ever seen that name Vera Smart before.

A I have no recollection of having seen that.

Q This is registered and classed as clothing. That is the same class your scarf was registered in; is that correct?

A I believe so.

Q What is the date of first use that you allege? It was 1947; is that correct?

A Yes, I believe so, '46, '47.

Q Here is Vera Smart in 1931 and the Patent Office allowed --

MR. O'HARA: Your Honor, this is argumentative. This is not a question.

THE COURT: You are not asking him a question.

MR. SHENIER: I want to know if he ever had any interference with Vera Smart.

THE COURT: Ask him that question instead of making speeches, please.

Q Have you ever had any interference with Vera Smart?

A No, I am not aware of it.

MR. SHENIER: I offer Exhibit N.

MR. O'HARA: The same objection I made previously as to the citation of third party registration, which does not prove usage of the mark.

THE COURT: Let me see it.

Q I show you registration 658,909 for Vera Stewart and ask you whether you ever had any conflict or confusion with that name in your name Vera.

A I don't know this name.

Q I asked you whether you had any confusion.

A No.

THE COURT: Any confusion about what?

MR. SHENIER: In respect of the confusion of the goods of Vera Stewart and their Vera, scarves.

THE COURT: What difference does that make? It is not actual confusion, it is the likelihood, isn't it?

MR. SHENIER: Yes, but history is more reassuring than prophecy, your Honor. If there is no actual case of confusion this is one of the things you should consider in your opinion. That is so stated by the Second Circuit, whether there has been any confusion.

THE COURT: If there is shown to have been some con-

fusion, of course you may do that. Then the more likelihood of confusion is clearer, but the standard is the likelihood of confusion, not actual confusion. You don't have to show actual confusion in order to prevail.

Let's proceed.

MR. SHENIER: I offer Exhibit O in evidence.

MR. O'HARA: I object to this, your Honor. Mr. Shenier himself over his own signature said that there is no conflict between this registration and the mark Vera in the Patent Office proceeding of his own. He says himself, there is his signature.

THE COURT: But that doesn't make it inadmissible, Mr. O'Hara. When you get to the point you can raise that. It may have a place as to how much weight I will place on it.

MR. SHENIER: This is to show it is a weak mark.

xx (Defendant's Exhibit O received in evidence.)

Q I show you Defendant's Exhibit P and ask you, has there ever been any conflict, confusion with the name on that registration for Vera-Sharp.

A No.

MR. SHENIER: I offer Exhibit P in evidence.

MR. O'HARA: Same objection.

THE COURT: All right.

xx (Defendant's Exhibit P received in evidence.)

Q Are any of your products sold in drug stores?

A No.

Q Do you know whether or not cosmetics are sold in drug stores?

A I believe so.

Q I show you registration 755,116 from a Dickerman Vera and ask you whether there has ever been any confusion between your products and the products of Parke, Davis. What's your answer?

A No.

MR. SHENIER: I offer Exhibit Q in evidence.

MR. O'HARA: I happen to know about this one because it is a client's registration. It is for a publication that goes out to doctors and that sort of thing. It is a Parke, Davis publication. It is a magazine, you know, like the American Bar Association Journal. I don't see how it has any relevancy whatsoever to this situation.

THE COURT: A lot of these things aren't in your line but that doesn't make them inadmissible. The last one was some cheese.

MR. O'HARA: I understand that, your Honor.

xx (Defendant's Exhibit Q received in evidence.)

Q I show you registration 638,831 for textile fabric Vera Cruz and ask you have you ever used any Vera Cruz fabrics

in your manufacturing of Vera garments, scarves?

A No.

Q And there has never been any conflict between Vera Cruz and Vera?

A No.

MR. SHENIER: I offer Exhibit R in evidence.

(Defendant's Exhibit R received in evidence.)

Q Before I proceed further, at the beginning of your testimony I asked you whether or not Vera adopted a great many marks and you said no. Since then we have shown that you have adopted a great many marks.

MR. O'HARA: I object to that.

MR. SHENIER: This is cross examination.

THE COURT: Come, Mr. Shenier, this is not cross examination. Don't make speeches and statements, ask him questions.

MR. SHENIER: I want to know whether he wants to change his testimony where he said he didn't adopt the latter marks.

A No.

Q I show you Defendant's Exhibit S which is a registration for Siglo de Oro by Vera, the defendant in this case, for calogne water and bath soap and ask you whether there has ever been any conflict between Siglo de Oro and your product.

A The name?

Q Yes.

A No. The same Siglo de Oro doesn't have any connotation.

MR. SHENIER: I offer Exhibit S in evidence.

MR. O'HARA: Your Honor, this one I do object to. I can't see any possible relevancy at all.

THE COURT: You are offering this in evidence because of the mark?

MR. SHENIER: No.

THE COURT: The origin of a mark is a man named Abelardo --

MR. SHENIER: Partially. As part of that registration I have a verified copy of the specimen which I would like your Honor to see. That is the next exhibit. If you look at the exhibit, Siglo de Oro you will see Vera as the maker and under Spanish law, as we will show, you must put the name of the maker of your products in Spain. You can't just make your products unless you put down the name of the maker. We were selling that in the United States; we will show that. This was registered in the United States Patent Office as part of the products with Siglo de Oro and Vera right on the specimen.

MR. O'HARA: This is not the defendant's registra-

tion, there is no showing at this moment that it has ever been used.

THE COURT: You said all that. The difficulty I have in regard to that is because the exhibits are not explained. As far as I know you are going to have to prove the rest of your statement.

MR. SHENIER: We will do that.

THE COURT: The registration here, the mark was registered Siglo de Oro and not Vera. All right.

MR. SHENIER: But the next exhibit will tie it up.

xx (Defendant's Exhibit S received in evidence.)

THE COURT: You will have to tie it up.

MR. SHENIER: We will, your Honor.

THE COURT: All right.

Q As part of Exhibit S I offer in evidence Exhibit T which is a certified copy of specimen attached to Exhibit S taken from the records of the Patent Office.

MR. O'HARA: Same objection, your Honor. The specimen remains in the Patent Office and there wouldn't be any showing that is evenextenuatingit one step further and has no relevance.

THE COURT: The only name is Siglo de Oro registered. That is the mark that was registered.

xx (Defendant's Exhibit T received in evidence.)

Q Have you ever manufactured any cologne?

A We do not manufacture cologne.

MR. O'HARA: I cannot hear you here.

THE WITNESS: Okay. No.

Q Have you ever manufactured any perfumes?

A No.

Q During your deposition were you asked these questions and did you make these answers --

THE COURT: I have allowed you to do that on several occasions, but in fairness to the witness when you make some reference you let him read what you are referring to and then ask him the questions. He has a right to see what you read.

MR. SHENIER: All right.

Q Do you want to read your deposition starting here in respect of the intention to manufacture or sell perfumes and calognes which the plaintiff in this case had. Read your deposition.

THE COURT: Ask him what lines you want him to read, Mr. Shenier and after he has read it ask him whatever questions you want to ask about it.

MR. SHENIER: Yes, your Honor.

A Yes.

Q Have you read your deposition?

A Yes.

Q Has the plaintiff in this case not only not made purfume but intended to make perfumes?

THE COURT: Would you put the question properly? You are asking him about a deposition ? Are you going to ask him in terms of a answers he gave at the deposition?

MR. SHENIER: I don't want to read from the deposition and have him repeat the testimony.

THE COURT: The only reason -- you either refer him to the deposition to refresh his recollection about something -- and I don't gather from the questions that you have got to that point -- if his recollection needs to be refreshed, or else you try to bring out the inconsistent statements. If it is an inconsistent statement to what he testified to here, read the questions and answers.

I don't know what you are doing.

MR. SHENIER: I am trying to bring out --

THE COURT: Don't tell me what you are trying to do. Do it one way or the other.

MR. SHENIER: Thank you, your Honor.

Q Did the plaintiff in this case Scarves by Vera Have any intention in October 1971 of making any perfumes?

A I don't know if there were any present plans at the time.

Q Any colognes?

A Same answer.

Q Any fragrances?

A I don't know if there were any present plans. I think in the deposition you gave to me to read it was answered in there that I didn't know of any plans.

Q So you never made any perfumes, fragrances, and you had no plans to make fragrances?

A Scarves by Vera didn't have any plans to make perfume that I know of.

Q You were Executive Vice President at the time?

A No, I was not the Executive Vice President. I was a vice president of the company.

Q And you knew about the operations of the company?

A Generally, yes.

Q You licensed others to use Vera?

THE COURT: Is that a question or a statement?

MR. SHENIER: Yes, that is a question.

Q Did you license others to make Vera? To use the trademark Vera, did you license others?

A For other products; is th t correct, sir?

Q Yes.

A Yes.

MR. SHENIER: I have another exhibit here before I

pursue that.

Q I show you registration 624,542 which has been identified or marked, rather, as Defendant's Exhibit U for women's wearing apparel including scarves, Vera Horn, and ask you whether you got any flack or conflict from Vera Horn scarves and your scarves.

A Never heard of this.

MR. O'HARA: I object to that question because it presupposes there was a Vera Horn scarf on the market. All that has happened here, and the vice of what is taking place is apparent, the registration does not indicate the goods are presently being sold.

THE COURT: Mr. O'Hara, you have told me that several times and I have overruled your objection in regard to the admissibility of this evidence. Don't keep telling me the same thing.

MR. O'HARA: I was objecting to his question which said was there a dispute with the goods. The registration doesn't evidence any goods, your Honor, the objection was different. I beg your pardon, but I was making an objection to a particular question, not the exhibit.

MR. SHENIER: I offer Exhibit U in evidence.

MR. O'HARA: Same objection.

THE COURT: I think that that objection is well taken.

It seems to me all you are doing at this point is asking the witness whether or not he was aware of this registration. There hasn't been any proof whatever in regard to any of these matters that they were on the market or what had happened to them. That's precisely what Mr. O'Hara has indicated and you cannot make that inference merely by asking this man a question about whether there has been any confusion.

The fact is that those registrations are in, but we have no evidence, as has been pointed out, that they were in use. You haven't got any evidence on that and you can't get evidence to that effect by asking this man a question which obviously he is not in a position to answer in the first place.

MR. SHENIER: Your Honor, the statute requires use before registration. The presumption --

THE COURT: The presumption of use before registration, obviously, but there is not a presumption of use after. As a matter of fact, there are several registrations here that have been indicated are no longer in use. Mr. O'Hara has raised that issue. It has nothing to do with the admissibility of those documents. It goes to the question of what weight to be given to them.

MR. SHENIER: If they have been used and there has been no conflict, that would be useful. If there was a conflict we ought to know about it.

THE COURT: All right. You tell me about conflicts. The issue is not whether there is a conflict. The issue is whether it has been --

All right, let's go to lunch.

(Luncheon recess.)

AFTERNOON SESSION: October 21, 1974
2:00 o'clock p.m.

SAUL P. LEVINSOHN, resumed.

CROSS EXAMINATION CONTINUED
BY MR. SHENIER:

Q You testified that Vera products were sold in Bergdorf Goodman's and these high fashion stores. Are these still being sold in these high fashion stores?

A I can't answer as to today as to whether they are being sold.

Q As to the time when you were executive vice president.

A Those were generally the types of accounts we sold to, yes.

Q And you sold to that type of account, Bergdorf Goodman and Gimbels and Macy's, too?

A The general run of account, yes.

Q You sold them to both lower class stores, so-called, and these snobbish stores as well; is that right?

THE COURT: You will hurt them if you classify them as low class. They might be suing you, Mr. Shenier.

MR. SHENIER: Your Honor --

THE COURT: Proceed. I am only lightening the mood. Let's go ahead.

MR. SHENIER: I was trying to bring out, if possible, it was my understanding if they sold to Gimbels and Macy's,

Bergdorf Goodman wouldn't touch it and this is what I want to bring out by this witness, if this is the fact or not.

THE COURT: Is that true?

THE WITNESS: Over a period of years we have sold, I believe most every retailer in the -- of consequence, put it that way -- in the City and in the country.

Q Simultaneously?

A I can't vouch for that. I couldn't vouch for that, whether it was simultaneous.

Q You have licensed a number of people I believe to use the name Vera. One of them is Burlington Industries?

A Yes.

Q Can you tell the Court some other licensees?

A We have Scoill Drits, Countess York --

Q Wait a minute. What does Scoill Drits make?

A They make needle point screen for the --

THE COURT: How do you spell this?

THE WITNESS: S-C-O-I-L-L D-R-I-T-S.

Q Before you leave that, did Scarves by Vera ever make needle point like Scoill Drits makes?

A I don't think so.

Q What is the next licensee?

THE COURT: What I would like to know, Mr. Levinsohn, I gather for example, as you indicated to me on Burlington

Industries, they have been licensed to use the design on linens.

THE WITNESS: On a particular group, sir.

THE COURT: All right. Tell me about the other licensees, what were they?

THE COURT: Scoill Drits were licensed to use both the Vera design and the Vera name in the production of needle point screens which are the mesh which women use for doing needle point work.

Q But Scarves by Vera doesn't sell needle point mesh themselves?

A No.

Q They never did? The answer is no?

A No.

Q Right. All right, what's another licensee?

A Countess York.

Q Now, stop for a moment and tell us what Countess York does.

A They make quilts and -- quilts and some draperies, I believe.

Q Did Scarves by Vera ever make qiilts or draperies?

A No.

Q All right, another licensee.

A Burlington Industries is one.

THE COURT: We had that.

Q What about Munro Products?

A I don't know that name.

Q Munro Products make luggage. I show you, to refresh your recollection, Defendant's Exhibit DK.

A That was the licensee referred to before who is no longer a licensee whose license was recinded.

Q I think you testified that Scarves by Vera never made luggage; is that correct?

A Never made luggage.

MR. SHENIER: I would like to offer Exhibit DK in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit DK received in evidence.)

Q What did Scoill Manufacturing make?

A That is the Scoill Drits, maybe the corporate name is Scoill or Scoill Drits. I am not sure of that.

MR. SHENIER: I would like to offer DL which is the Scoill license in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit DL received in evidence.)

Q There was more than one license to Burlington Industries; is that correct?

A To the best of my knowledge, I don't know.

Q Let me show you Defendant's Exhibit DM dated 1969.

Would you tell the Court what that is?

A Apparently it is a license between a division of Burlington Industries and Scarves by Vera, the licensor.

MR. SHENIER: I would like to offer DM in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit DM received in evidence.)

Q I show you another license by Burlington, this time Burlington House, and it is identified as Defendant's Exhibit DN.

A Yes, this is a license.

MR. SHENIER: I offer the second license in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit DN received in evidence.)

Q Were there any other licenses?

THE COURT: If you are going to have all those in evidence, I don't see how that helps your case one way or the other, but it seems to me the fact that Vera Scarves licensed someone else to utilize their name I don't see is of any assistance to your case.

MR. SHENIER: Do you want me to hear it?

THE COURT: I don't want to hear you, I am just dropping that so that you may at the time comes enlighten me.

Q You testified, I believe, that you had products made in Japan. Did you have them made in any other foreign

country?

A Yes.

Q Can you tell the Court what other countries your products were made in besides Japan?

A Taiwan, Korea, Italy. I answered that question as to products that were made and are being made.

THE COURT: When you said those products were made, does that mean that the textile was made as Vera's own --

A No, we did make sweaters in Korea. We no longer make sweaters in Korea. We made belts in Taiwan, we no longer make belts in Taiwan. That was the reason for the answer.

Q You do make scarves which you design in Japan?

A Yes, we do.

Q Do you make scarves which you design anywhere else?

A In Italy.

Q I am going to hand you a group of exhibits which were furnished to us by you -- when I say you, I mean the plaintiff here -- which indicates price lists of various products that you make. They are identified as Defendant's Exhibit DW to EP inclusive. Look them over and tell me whether they represent the prices for your products.

A Yes, I can identify these.

MR. SHENIER: I offer Exhibits DW through EP, inclusive, in evidence.

MR. O'HARA: No objection.

(Defendant's Exhibits DW through EP, inclusive, received in evidence.)

xx

Q Have you any knowledge of anyone ever approaching you or any official in your company in an attempt to peddle your mark to anyone else?

THE COURT: Attempt to what?

MR. SHENIER: Peddle the trademark to someone else.

MR. O'HARA: Do we have to have a characterization such as peddle?

THE COURT: Read the question, please.

(Question read.)

THE COURT: Rephrase the question.

Q Have you any knowledge of anyone approaching you or any other official of your company in an attempt to get you to license your trademark to someone else for a product other than you make yourself?

A No.

Q When did the name Vera as used by the defendant first come to your attention?

A Prior to my employment by Vera.

Q When were you first employed by Vera?

A 1953.

Q And this came to your attention before then?

A Oh, yes.

Q In what respect?

A Well, it was a name in the trade and I was in that trade before, the same trade, prior to my employment.

Q I don't mean the name Vera by the plaintiff. The question is, when did the name Vera, as used by the defendant, first come to your attention?

A I beg your pardon, I'm sorry, I misunderstood your question. As I described in my previous testimony, on 14th Street during a visit to the store.

Q In other words, as I understand your testimony you were walking down the street, on 14th Street, and saw this in a window; is that correct?

A Yes.

Q You didn't see any advertisement in Women's Wear for a salesman of Vera products?

A I believe you are correct in that.

Q In other words, the sequence of events is this then, if I may suggest a correction to your testimony: You saw an advertisement in Women's Wear for a salesman to sell Vera products and then you went out and looked for Vera products; is that correct?

A No. I didn't go out and look for it. It was coincidental.

Q It was coincidental. You saw the ad --

A I saw it was not an ad for merchandise. It was an ad for salesman --

THE COURT: You saw the ad first?

THE WITNESS: In one of the trade papers.

THE COURT: And then you went to 14th Street?

THE WITNESS: Yes, sir.

MR. SHENIER: That's all I have at this time, your Honor.

THE COURT: All right. Anything further?

REDIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Levinsohn, there were various other trademarks referred to in cross examination like Veraterry and what have you. Were those marks which were used by the plaintiff from time to time over the years, or were they consistently used, or what was the nature of their use?

A They were item designations of a type fabric or terrycloth we called Veraterry, we publicized it under that name, and Verasheer was a chiffon of clear fabric which classified it as not company trademarks, they were item line designations.

Q Would it be proper to refer to them as a subbrand?

A Yes.

Q In connection with all the goods marketed by the plaintiff, did the word Vera invariably appear?

A Yes.

THE COURT: That means that while you were using, let's say Veracrepe that on the item the mark Vera would appear as well as Veracrepe?

A We had some labels on garments such as Verasheer, some labels on -- that would be on the sheer fabric and those on terry would be Veraterry as indicated on the woven label or on a hang tag. They were, as the attorney says, subordinate to the trade name publicized and it would designate items within the line to identify them as a Vera item.

THE COURT: I understand that, but what I really want to find out was that if you used on the fabric the Verasheer, was Vera also used?

THE WITNESS: Oh, yes.

THE COURT: In addition to Verasheer there would be Vera?

THE WITNESS: The Vera name was on for two purposes, one to designate Vera as a copyright, designed as a copyright, as well as for trademark purposes as to flamability for customers.

Q I show you what has been previously marked Plaintiff's Exhibit B for identification consisting of what purports to be

a number of textile products and ask you if you would please identify each one for the Court as to what it is and then we will replace them all as you identify them. Then we will put them all back in the box.

A Do you want me to mention the number on them?

Q Yes, each one.

THE COURT: Are they each numbered?

MR. O'HARA: 1-G, 1-A, yes, so forth.

A This is 1-G. This is a women's top or blouse which is -- shall I identify --

Q Whatever it is.

A The printed blouse of Vera's copyright design as indicated by the printed name and copyright symbol, and also by a label with the Vera name and copyright symbol.

There is also a hang tag on the blouse with the Vera name.

MR. SHENIER: Were they all made by Vera or some of them by Burlington?

Q If any of these exhibits as you examine them were made by anyone other than the plaintiff will you please so state? Otherwise it will be assumed everything you have identified is a product manufactured by and for the plaintiff, and sold by and for the plaintiff, and not by a license.

A Yes. This is 1-E. This is what is termed a shift

or dress, or it is identified with a Vera name label sewn in. This type of garment does not have a printed name in it. It is not a practical printing. It is impractical to do that. This is made by -- all those were made by Vera.

This is a towel, hand towel, made by the linen division of the company and has the Vera name printed in it with a copyright symbol, and also has a woven label sewn in "Scarves by Vera" made by the company.

This is a coverall made by the linen division. It does not have a printed indication of the maker, but does have a woven label sewn in, and has a paste-on label with the Vera identification.

Q Mr. Levinsohn, in order to abbreviate your testimony, if you will just identify the article as to whether or not it is a product of Vera; what appears on it the Court can see at any time. It is only from the point of view whether they are products made by the plaintiff.

A 1-C, a tablecloth made by the linen division --

THE COURT: I would like Mr. Levinsohn's testimony as to each exhibit.

A This is a tablecloth as made by the linen division of Vera with a printed name and symbol, and I think it also has a woven label somewhere on it.

This is a pair of women's slacks made by the blouse

-- the apparel division "Blouses by Vera." It has a Vera label sewn on, a Vera hang tag, and a Vera label sewn into the waistband. This is 1-F.

This is a pot holder made by the linen division; identified by the Vera name and copyright symbol. This is 1-J.

And this is a dish towel made by the linen division with the identification "Vera" and the copyright symbol. This is 1-I.

A barbecue glove, 1-K, also made by the linen division and identified with the name Vera and symbol.

This is an apron made by the linen division with the Vera name and this is 1-L.

A napkin, 1-B, which is a Vera print and identified by the Vera label inside.

This is a head scarf which is Exhibit 1-M, also with the Vera name and hang tag. It doesn't have a hang tag. That is it. This is made by the scarf division.

This is a scarf made by the scarf division, Exhibit 1-H, which is identified with a label Vera -- whether it has the Vera name or not, I don't know.

This is a head turban. It is identified as a "huggy" as shown in the illustration. It is not a print and only has a tag on it. There is nothing -- I don't believe

there is a label put on this type of article because there is no copyright involved. It has merely the label identified as a Vera item.

This is a calendar towel made by the linen division, Exhibit 1-O. It has the Vera name on it. I think that's the total identification of the item.

This is an oblong scarf which was made among the early things, has the Vera name on it, has a hang tag on it with the Vera name, and illustrations of how it is to be worn. And this is Exhibit 1-Q made by "Scarves by Vera."

This is Exhibit 1-R, which was a sales order, sent out to stores and we used them as backgrounds to indicate a a section of a store counter which might have been devoted to Vera products.

This is a company item. This is a place mat made by Linens by Vera, Exhibit 1-S, also identified with the Vera name.

This, too, is a head scarf made by Vera, "Scarves by Vera," and has an -- Exhibit 1-T, has a hang tag with the Vera name and also with the woven label indicating "Vera."

That is all.

Q Mr. Levinsohn, is there such a thing known in the trade known as a signature scarf?

A Yes.

Q I show you what is marked as Plaintiff's Exhibit 1-H and ask you if that is a signature scarf.

A Yes. It is known as a signature scarf because Vera signs all the original scarves and all subsequent scarves with her name in script, in her hand.

Q So as far as you know, who was the first manufacturer of what is known as a signature scarf?

A Vera is known as the originator of the signed signature scarf.

Q As of the time you left in February of '74, would you please tell us what other names you knew of in the marketplace that were on signature scarves Yves St. Laurent, , Givenchy, Echo, Norell , I think -- what else? -- oh, at the moment I am at a loss for more names, but there are a goodly number.

Q Is the name Chanel on a signature scarf, do you know?

A I don't know.

Q Christian Dior?

A Yes.

Q Balmain?

A Yes.

Q Ricci?

A I believe so, but I am not positive.

Q Gucci?

A Yes.

Q Bill Blass?

A Yes.

Q Pucci?

A Yes.

Q Jean Patou?

A Yes.

Q Worth?

A I'm not sure of that. I don't know.

Q Germaine Monteil or Monteil?

A What?

Q Germaine M-O-N-T-E-I-L.

MR. SHENIER: May it please the Court, I don't see the relevance of this testimony. The fact that others have put out signature scarves -- what bearing has that on this case on whether or not we have a right to use Vera on perfumes or soaps.

THE COURT: Maybe not. I think he is attempting to show that Vera was an innovator in the field.

Q Do you recognize that last name, Germaine --

A It is a fashion scarf, yes.

Q Do you recognize those names in the field of what you would refer to as high fashion?

A Yes.

Q Are most of the ones that I named recognized as French couturiers?

A Yes.

THE COURT: There were some Italian names, also.

MR. O'HARA: I said most, your Honor.

THE COURT: And some American, too.

MR. O'HARA: I don't know that I named any American at the moment.

Oh, yes, Bill Blass, your Honor, I did.

I have no further questions of this witness.

RECROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Levinsohn, on Exhibit 1-H we find a little tag which I will show you marked "patent pending." Tell us what is patentable about that, or what patent was pending.

A This was back in the 1945 or '46 area when Scarves by Vera went into business and I think there was a misunderstanding as to what was a design patent and what was a copyright patent, and until the company had competent advice as to what was a copyright and what was a design patent that was used.

Q Do you think that Balenciaga would have anything made in Japan in mass production?

A Yes.

* * *

Q And didn't Emilio Pucci start putting his signature on dresses before Vera did on scarves?

A I can't answer that of positive knowledge.

Q You know Emilio Pucci signs all of his clothes Emilio Pucci?

A Oh, yes.

MR. SHENIER: No further questions of this witness.

THE COURT: Thank you very much.

(Witness excused.)

THE COURT: Call your next witness, Mr. O'Hara.

J O S E P H W . S I E C Z K A , called as a witness, being first duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Sieczka, by whom are you employed?

A By Rogers, Hoge & Hills.

Q In what capacity?

A As accounting manager.

Q Where do you live?

A I live at 95 Patterson Road, Fanwood, New Jersey.

Q Were you requested by me to visit the premises of Gimbels Department store?

A Yes, I was.

Q Is this on your way to and from your home?

A Yes.

Q Were you asked to go there and look for articles bearing the name Vera?

A Yes, I was asked.

Q What did you find and approximately when was it that you went there?

A I went to Gimbels on July 26, 1973, and I went into the main floor of Gimbels to go in to look into the cosmetic section for certain products. While I was on my way toward the section I inquired of one of the sales women where I could find Vera cosmetics and the sales girl said that she knew Vera sold scarves, but she didn't know that Vera sold cosmetics.

By looking around in the cosmetic section I did find a counter where certain products were being sold under the name Vera. These products were in the left center section of Gimbels on the main floor, and they were about one counter removed from the counter where Vera scarves were being sold.

Q I show you what has previously been marked as Plaintiff's Exhibit 11-E and ask you if you can identify that as one of the articles which you saw on sale at the cosmetic counter.

A Yes, Vera Lavanda is one of those I saw on the counter.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: No objection.

xx (Plaintiff's Exhibit 11-E received in evidence.)

Q I show you Plaintiff's Exhibit 11-D and ask you if you also saw that produce on display in Gimbels.

A Fantasie Griega, yes, this was also on the counter.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: No objection.

xx (Plaintiff's Exhibit 11-D received in evidence.

Q I show you what has been marked Plaintiff's Exhibit 11-C and ask you if you saw that on display on there?

A Yes, this was also on the counter.

MR. O'HARA: I offer that in evidence.

MR. SHENIER: No objection.

xx (Plaintiff's Exhibit 11-C received in evidence.)

Q I show you what has been marked Plaintiff's Exhibit 11-B and ask you if you also saw that on the counter.

A Yes, this was also on display.

Q Prior to the time that you visited this store had you ever had occasion to have any knowledge --

MR. O'HARA: Sorry, I have 11-B in evidence.

MR. SHENIER: No objection.

xx (Plaintiff's Exhibit 11-B received in eyidence.)

Q Did you ever have occasion to know the name Vera as

connected with any merchandise?

A It just so happens I bought my wife a couple of Vera scarves about three or four years ago. This was the first connection I had with the word Vera.

Q That was before you were employed by Rogers, Hoge & Hills; is that correct?

A That's correct.

Q I show you what has been marked Plaintiff's Exhibit 11-A and ask you if that is representative of the scarves which you say you saw on display one counter away from the cosmetics which you have just identified? Is this representative of what was on display and on sale then?

A Yes, the scarves had the word "Vera" in the corner.

MR. O'HARA: I offer that in evidence.

MR. SHENIER: No objection.

xx (Plaintiff's Exhibit 11-A received in evidence.)

MR. O'HARA: No further questions.

CROSS EXAMINATION

BY MR. SHENIER:

Q The box, Plaintiff's Exhibit 11-B, contains two bottles of fragrances, one marked Rosaleda and the other marked -- both marked Rosaleda. One is with "Vera" in small letters.

A Yes.

Q Vera being to you what, the name of the manufacturer?

A The name describing --

Q What does it mean to you?

THE COURT: What difference does it make?

MR. SHENIER: Because the name of the manufacturer is one thing, your Honor. The name of the fragrance is another. We are using this as a source -- we have been doing it for 50 years. They come in now, never made perfumes or calognes and want to stop us from carrying on business under our own surname.

THE COURT: I don't understand your asking him a question like that.

MR. SHENIER: All right, your Honor.

Q In this Exhibit 11-D we find two containers, one called Fantasie Griega and "Vera" in small letters; is that correct?

A That is correct.

Q In Exhibit 11-E we find lotion Lavanda by Vera; is that correct?

A That is correct.

Q In Plaintiff's Exhibit 11-C we find Rosa Violette.

A Yes.

Q In the scarf which you purchased we find in the lower left-hand corner "Scarves by Vera, 60 per cent rayon, hand

rolled, made in Japan," correct?

A The label says "Made in Japan."

Q Right.

A Incidently, I didn't purchase this.

Q Where did this come from?

MR. O'HARA: I don't think the witness knows. I simply asked him if it was representative of what he saw on that counter and he said it was. Then I offered it on that basis and there was no objection.

MR. SHENIER: No objection. I admit they sell scarves like that.

Q You did go to Gimbels to shop.

A Yes, I did.

Q And you found these on the first floor?

A On the main floor of Gimbels.

Q And the scarves were called accessories; is that correct?

A Are they called accessories?

Q Yes, was that in the department called accessories at Gimbels on the first floor?

A I didn't know the description accessories, but it was at a counter, one counter removed from where I found the Vera --

Q You also found a bake shop on the first floor of

* * *

are not getting anywhere by reciting a great deal of what is being sold at Gimbels. It is a waste of time.

MR. SHENIER: I have a directory here of Gimbels showing everything they sell on the first floor which we have identified as Defendant's Exhibit HN and I would like to offer this in evidence.

THE COURT: Do you have any objection to it?

MR. O'HARA: I don't have any objection.

xx (Defendant's Exhibit HN received in evidence.)

MR. SHENIER: No further questions.

(Witness excused.)

MR. O'HARA: Your Honor, I have a couple of housekeeping matters I think can be attended to without the presence of a witness.

The defendant at Mr. Shenier's consent provided the plaintiff with samples of all of its product lines and these have previously been marked on exhibits before we appeared in this court.

THE COURT: Whose products are they? Are they defendant's products?

MR. O'HARA: Yes, these are all products of the defendant which were provided to us and which I understand Mr. Shenier will stipulate that these are the products sold by the defendant in this case.

THE COURT: All right.

MR. O'HARA: To avoid calling a witness to identify all of these products --

MR. SHENIER: Yes, these are the products that we sold.

MR. O'HARA: They are marked, if you please, Plaintiff's Exhibits 19 through -- it would be A through X.

THE COUXT: 19-A through X, all right.

MR SHENIER: No objection, your Honor.

(Plaintiff's Exhibits 19-A through 19-X received in evidence.)

xx

MR. O'HARA: Your Honor, also at this time I would like to tender published ads and promotional material of the defendant Vera having previously been marked for identification as Plaintiff's Exhibits 17-A through AA. And Mr. Shenier stipulates that these have been published -- I'm sorry, A through SS -- several have one page sheets from the papers -- I have those in evidence.

MR. SHENIER: No objection.

MR. O'HARA: When they are marked, since I don't have a witness to direct your Honor's attention to to look at the exhibits as they go in.

(Plaintiff's Exhibits 17-A through 17-SS received in evidence.)

xx

* * *

* * *



S I D N E Y S T R I C K E R , called as a witness, being first duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q What is your occupation, Mr. Stricker?

A I am a management consultant primarily in the field of marketing of consumer package goods.

Q Do you have any knowledge of the cosmetics field?

A Yes.

Q From what do you derive your knowledge of the cosmetics field?

A I was employed by Revlon for approximately eight years from 1961 until 1969 as the senior vice president in charge of marketing and sales of Revlon International Corporation.

Q In the international field?

A Yes.

Q You know the plaintiff "Scarves by Vera?"

A Yes.

Q Did you ever have any contact with the plaintiff?

A Yes.

Q When was that?

A Approximately toward the end of 1969, September or

October. I can't remember precisely. I was called by the chairman of the board, I believe, or the president of Manhattan Industries.

Q Do you know the relation of Manhattan to Scarves by Vera?

A I believe they are the parent corporation.

Q Did you have any contact with any official of Scarves by Vera?

A Yes, by a gentleman named Matt Shaw who I believe at that time was the executive vice president in charge of sales. I am not sure of his title, but approximately that, and also Vera herself, and perhaps Mr. Silverman.

Q In what connection did you have these contacts?

A I was asked by Mr. Shaw to give my opinion as to the viability of the name Vera which had been proposed to them to be used by Columbia Broadcasting System as a possibility on a line of cosmetics that Columbia wanted to produce and offer for sale for a mail order house.

Q Was this within your area of competence?

A Yes.

Q Did you discuss the matter with them?

A Yes, I did.

Q What did you do?

A I suggested to them that I didn't believe that this

would be a very good avenue for them to promote their name; that if they thought in terms of going into the cosmetic business that C.B.S., or to whomever they were going to -- whoever C.B.S. was going to have run this situation were probably not nearly as competent as some of the better known names in cosmetics, and that it probably would be better for Vera to attach her name to a more competent company.

Q How did you regard the Vera name?

A To me Vera meant high fashion and then chic and a name that had definite possibilities that one could attach to fragrances and cosmetics in view of what had been done and is being done, and was being done at that time with names of similar character throughout the cosmetic and fragrance industry.

Q Do you know fashion names as part of your occupation?

A Yes.

Q Could you perhaps give us an idea of comparable names, names in which you have perhaps specific familiarity.

THE COURT: Names comparable to Vera.

MR. DAVIS: Yes, your Honor, in the same field.

A In the same field?

Q Or on the same order, perhaps.

A Okay. Bill Blass, Chanel, Eva St. Laurent Gucci, Emilio Pucci, Pierre Cardin, Hattie Carnegie, Nettie Rosenstein,

Adele Simpson, Lanvin, Madeline de Rauch.

Q I think that's probably sufficient for our purpose.

THE COURT: I recognize two of those names as being Blass and Cardin in the men's wear and also in the fragrances.

THE WITNESS: Yes.

THE COURT: Is that also true of Chanel?

THE COURT: Oh, yes, most of the names I mentioned are in both men's and women's, and most of them are in fragrances as well as cosmetics.

THE COURT: De Laroche and Simpson.

THE WITNESS: Madam De Larouche is a women's couturier but she has a line of both men's and women's fragrances, but no cosmetics.

Q You mentioned the name Adele Simpson. Is she an American couturier?

A Yes, she put out or puts out a fragrance called Collage by Adele Simpson.

MR. SHENIER: If it please the Court, I would like to object to this line of testimony because it hasn't been established in evidence that Vera is a high fashion dressmaker such as Christian Dior and Chanel, and these people he mentioned. Here again they are using a minor premise for a major premise. Vera makes cheap scarves.

THE COURT: You are making a great deal of what you

* * *

appear on fragrances?

A Well, I would say Hermes, Hermes is not considered haute couture, but is very big -- not very big in volume, but very important in scarves, the leather business and things like that from France and they have their whole line of fragrances, both for men and for women.

Q Do you know the term "signature scarf"?

A It is vaguely familiar to me but I can't readily identify it.

Q To proceed with your discussions of these Scarves by Vera personnel --

THE COURT: This took place in 1969?

THE WITNESS: Well, the start of what they engaged me to do began in the fall of '69.

Q As a result of your discussions what did you proceed to do?

A First of all, I advised them, as I already testified, that they should not become engaged in business with C.B.S.

Q Did you make any approaches to anyone else aside from C.B.S.?

A Yes. The second thing that I did was to study the possibility of using the name Vera on a line of fragrances and cosmetics in the sense that we would approach certain of the major cosmetic companies allowing them to franchise the

name and produce a line due to the fact that it was my personal marketing judgment that Vera was a very good display name, and that her designs, she having traveled the world, would be unusually attractive on the packages. And part of the reason that I came to this conclusion was because there was a line being produced at that time in Japan, brought to this country, named Hani Mori. Hani Mori also from Japan was a haute couture and she had her own designs on all of the packages, and it was unusually attractive and did -- displayed well. And I thought that this in a sense was comparable to what I had in mind for Vera.

We studies a list of probably 20 to 25 potential ones that we should approach, and I boiled it down to one that I thought would be receptive.

Q Were Scarves by Vera management supporting this idea of yours, of making this approach?

A Yes.

Q What did you do as a result?

A We decided that the company that should first be approached would be Max Factor and I made a trip in May of 1970 to California to talk to the president and one or two other executives of Max Factor to see if this marketing approach would be of interest to their company.

Q Did you have discussions with them?

A Yes, I did.

Q Did you work something out or not?

A Their conclusion was that at that time they had just launched an important line of their own which was going to take considerable money to back and they decided, even though they thought it was a very good idea, and might project them into a certain bracket that they felt they needed, they didn't want to invest the money at that time and they asked if we could hold it in abeyance, and I told them, well, I thought it was a pretty hot idea and I didn't want to hold it in abeyance, I wanted to approach one or two other companies to see if they would be interested, and Max Factor said it would be all right by them because they didn't pick up the idea for themselves at that time.

Q Did you in fact approach any other companies?

A Yes, I approached Estee Lauder and I had a meeting --

Q Could you tell his Honor what Estee Lauder is?

A A cosmetic company founded by Estee Lauder herself that's involved in cosmetics, fragrances, treatment items and so forth. It has a broad line of cosmetics at a very high level, and she is in very restrictive distribution.

Q Did that bring forth any concrete results, your discussion with Estee Lauder?

A No, I met with Leonard Lauder the president of the

company who was not the president at that time but he is now, and he felt that inasmuch as practically all of the products of Estee Lauder that were on the market at that time had her name on them he didn't wish to introduce, and didn't think that his mother would wish to introduce another name, especially that of a woman. So that -- he didn't think it was a bad idea, but didn't think it was good for his company.

Q Did you then report back to the Scarves by Vera personnel?

A Yes.

Q What eventually happened?

A We decided that we wouldn't take this any further at this time; that we would hold it in abeyance until some future time when perhaps it might be a good idea to resume discussions with someone else.

THE COURT: When you say you decided, when was that done?

THE WITNESS: I would say that was either June or July of 1970; somewhere in that period.

Q Mr. Stricker, I would just like to show Plaintiff's Exhibit 3-B. Have you seen this before?

A Yes, I have.

Q These names that appear here; do you recognize them?

A Yes.

Q Could you just tell his Honor some of them?

A Well, this is Hani Mori which is one of the key ones that I was basing my judgment on and this is Bill Blass, Emilio Pucci, Donald Brooks and Vera, and part of the reason that I thought this was quite important was because the name Vera was short, easy to remember, easy to display, and surrounded by her own designs that would give an excellent shell of attraction which many other cosmetic companies didn't have.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Stricker, how would you characterize your business? Are you an entrepreneur?

A No.

Q Are you a broker?

A That is part of what I do.

Q Suppose you were interested in Max Factor's name, what would you get out of it?

A I was employed by Vera Scarves as a business consultant.

Q I understand that.

A And, therefore, the only thing that I had in relation to that was that I would be getting a fee which I did get.

Q Did they pay you also to approach Max Factor?

A Yes.

Q Who did you talk to there?

A Alfred Firestein, the president of the company.

Q Did you talk to Ralph Lazarus, the general counsel?

A No.

Q Did you talk to anybody else?

A Chester Firestein was there also.

Q Yes, he is a brother.

A Yes.

Q Did they pay you to approach Estee Lauder?

A Yes, they did.

Q No plans on the part of Vera to manufacture the fragrance themselves?

A No, I specifically advised them against that.

Q Do you know who David Crystal is?

A I know the name.

Q They make clothes, do they not?

A Yes.

Q Would you say that Estee Lauder would have a right to make a Crystal fragrance?

A Would they have a right to?

Q Yes, David Crystal is a well known --

A Yes.

THE COURT: How can you ask him whether they have the

* * *

has nothing to do with anything in gross.

MR. SHENIER: He is trying to sell the name Vera when he hadn't used it yet.

THE COURT: Ask him some questions about that.

MR. SHENIER: He mentioned Estee Lauder and by coincidence --

THE COURT: Just ask him the question.

Q These names that you mentioned that are also selling fragrances, they are all haute couturiers, aren't they?

A No, they are not all.

Q Which ones aren't?

A Gucci is not.

Q They make shoes.

A They make many things in leather goods,and jewelry, and other things, but they are not considered haute couturier.

Q So they expanded from the shoe business into the perfume business?

A I can't give you the chronology of how they expanded. As a matter of fact, they are not as of this moment publicly in the perfume business, but I have knowledge of the fact they are going to be there.

Q But they are not in it now?

A Not in this country.

Q Any other names that are not haute couturier?

THE COURT: He identified one before.

THE WITNESS: Hermes.

Q They make what?

A Scarves, bags, belts, leather goods, so forth. They have been in it many, many years.

Q I mean in the perfume business.

A Many, many years.

Q Were they in the perfume business before they made scarves?

A I don't know. They are a French firm that has probably been in business for well over a hundred years, maybe 150 years and so far as I know tracing back to when I first received some of their cologne would be in the 1950s that they had it, and I must assume, knowing the kind of firm they are, that they were in fragrances long before that.

Q In other words, they were in fragrances first?

A No, I didn't say that, sir. I said that I am not aware of their exact history, but it appears from the time that I have been in their shop in France that the origin of their business began with leather goods.

Q And then they branched into perfume?

A No, they probably went into accessories or leather goods and eventually in the scarves and fragrances.

Q You don't know which came first?

A I do not.

Q They have been in business for a hundred years?

A I can't say for sure, but it looks to me like at least a hundred years.

Q Have you ever been in Spain?

A Have I ever been in Spain?

Q Yes.

A Yes, sir.

Q Are you familiar with the Vera fragrance line in Spain, in Barcelona?

A No.

Q Did you ever encounter the Vera fragrance --

A I did the other day.

Q Before that?

A Never.

Q At the present time then you have no licensee for Vera and the scarves --

A I am not --

Q I mean the company has no licensee.

A I don't know that for a fact.

Q I mean as far as you know.

THE COURT: What difference does it make? All he can tell you is what he has done. He has told us that. If you want to find out whether they have a licensee, get it from

* * *

Will you stipulate to that? Were they used by this defendant?

MR. SHENIER: Just a minute. I think so.

So stipulated.

MR. O'HARA: I offer in evidence 15-A through D.

(Plaintiff's Exhibits 15-A through 15-D received in evidence.)

xx

MR. O'HARA: Also, your Honor, there was a recent case in California which factually was similar to this case, that in addition to citing it I had a copy made of the decision of the District Court. I want to hand it up if I might. It might be helpful in connection with the evidence that may be introduced by the defendant.

THE COURT: Just get it up to me. I appreciate that very much.

MR. SHENIER: What case is that?

MR. O'HARA: The Diaz case.

If Mr. Shenier can take the witness I would be delighted. I am sorry, your Honor.

MR. SHENIER: All my cases will be the Second Circuit, your Honor.

THE COURT: Call your witness.

A L F R E D O B . F E R N A N D E Z , called as a witness, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHENIER:

Q What is your position in connection with the defendant here, Mr. Fernandez?

A I am a vice president.

Q Of Todo Imports, Ltd.?

A Yes.

Q Will you tell the Court what Todo means in Spanish?

A In Spanish means anything or everything.

Q Entirely?

A Entirely.

Q Useful?

A Yes.

Q So what does Todo Imports import, name some of the goods.

A Imports furniture, giftware, toiletries, costume jewelry, wine, dolls, , little items like leather openers, and small things like that. Those are the items. I can't recall. We have many different items.

Q Antique weapons?

A Muzzle loading guns, too.

Q And antique swords?

A Antique swords, too.

Q From whom were your toiletries and cosmetics

imported from, from what source?

A Vera, S.A.

Q Vera Perfumery Cosmetic, S.A.?

A Yes.

Q They are located where?

A In Barcelona.

Q Do you have any knowledge where Vera came --

THE COURT: What is the name of the company, Vera S.A.?

MR. SHENIER: Society Anonyme.

THE COURT: Barcelona, Spain?

MR. SHENIER: Yes, your Honor.

Q Do you know how the name Vera was derived?

A From his founder and sole owner.

Q And his name was what?

A Abelardo Vera Martinez.

Q And in Spanish custom what is the surname?

A Abelardo.

Q Abelardo is the father's name and Vera the mother's name?

A Yes.

Q Do you know how long this company in Barcelona has been in existance?

A I know since the early thirties, but I can't be

sure of that.

Q All the time you have been in business in total imports has been since when?

A 1968.

Q Do you know whether or not the goods were imported from Spain by someone before you took over?

A Yes.

Q Who was that?

A I know there is a name named Vera Cosmetics who started before us and also Alexander started before us.

Q You now sell to Vera Cosmetics in the United States?

A Yes.

Q The company that used to import it?

A Right.

Q But you now supply it?

A Yes.

Q All the time you have been in business has anyone ever sent you an order for Vera scarves?

A Never.

Q Did you make application or cause application to be made in the Patent Office for the registration of the trademark Vera for cosmetics?

A Yes, I did.

Q The application was made by the same company you

are connected with?

A Right.

MR. SHENIER: I would like to introduce at this time the title page -- a copy of the title page, page TM254, of the official gazette of the United States Patent Office dated May 29, 1973. I have the original official gazette, but this is a photostatic copy showing the publication in class 51 cosmetics and class 52 detergents and soaps.

THE COURT: What does that show?

MR. SHENIER: It shows that the Patent Office allowed the registration and published it for purposes of our position which Judge Augustus Hand says is a fact to be considered in these cases. I have authority for that.

THE COURT: That has been a long time ago. I think the view from the bridge has changed a great deal since then. I think the courts are now a little less inclined to look upon the Patent Office for much help.

In any event, let me look at it.

In other words, you are saying to me that the mark Vera registered for this Spanish Barcelona company has been registered in the Patent Office?

MR. SHENIER: It has been allowed and published for purposes of our position, and our learned brother here has asked the Patent Office to withhold the registration until this

proceeding in which we are now engaged is terminated.

THE COURT: I understand. Just tell me what the facts are. Stop advising me; just tell me what the facts are.

MR. SHENIER: Thank you, your Honor.

MR. O'HARA: Are you offering it in evidence?

MR. SHENIER: I am offering it in evidence.

MR. O'HARA: No objection, your Honor.

xx (Defendant's Exhibit EQ received in evidence.)

Q Will you tell the Court, Mr. Fernandez, to what channels of trade your products are distributed largely?

A Drug stores, small stores and botanicas.

Q Do any of the stores except Gimbels and perhaps other department stores sell any fabric items along with your cosmetics and perfumes and fragrances to your knowledge?

A Yes, some do.

Q Which ones?

A General stores.

Q Do botanicas sell?

A No.

MR. SHENIER: I am now going to introduce some advertising literature and brochures which have been used by the -- originating with the defendant's supplier, Vera, Barcelona of Spain, and these are marked Exhibit W through AO, inclusive.

* * *

Q I will ask you to look at these exhibits and after you have seen them hand them to the Court.

THE COURT: Hand them to the clerk first to be marked.

MR. SHENIER: I offer Exhibit W in evidence.

THE COURT: Let the witness look at them and then they can be marked. Show them to Mr. O'Hara.

MR. O'HARA: Instead of showing it to the witness, he can show it to me and perhaps we can expedite it. I probably have no objection to most of these.

I have no objection to any of these exhibits, your Honor. They can all be marked without objection.

MR. SHENIER: I think they start from V. I said W but it is from V.

(Defendant's Exhibits V through AO received in evidence.

Q Your customers are largely of what nationality?

A Spanish speaking.

Q And your advertisements are directed largely to Spanish speaking?

A Yes.

Q I show you Defendant's Exhibits BT through DJ and ask you if you can tell the Court briefly what sort of advertisements they are and what magazines and newspapers they are

published in.

A When you have what sort of advertisements? You mean you refer to this, for example?

Q Yes.

A This was made in mostly only one newspaper.

Q That paper was what?

A El Tiempo and this was an advertisement in order to -- when we first start with Vera we called the Spanish consumers about the name Vera and made them realize it was something coming from Spain, and that has many, many different fragrances.

MR. O'HARA: I object and move to strike that portion which says "to make them realize it came from Spain" as interpreting what the consumer would interpret the advertisement to mean.

THE COURT: Let me see it.

MR. O'HARA: I call your Honor's attention to specifically before the ad.

THE COURT: All right, the motion is granted.

Q Your intention was to put the advertisements in the paper?

A This particular one --

MR. O'HARA: Your Honor, it is what they meant.

THE COURT: He wanted to bring the products to the

attention of the Spanish speaking population.

That is a New York newspaper?

THE WITNESS: Yes, after we come out with this one. That is what I mean when I said a moment ago about this --

Q In other words, the word Vera with a question mark first appeared as a teasing ad, then you followed it up?

A Right.

Q Would you translate for the Court what the follow up advertisement was?

A "This is Vera the Spanish perfumery that has it for everybody, for every taste, for every occasion, fragrance for you," and then we advertised all the fragrances that we had, and underneath some of the stores where we already allocated the product.

THE COURT: Where the products could be purchased?

THE WITNESS: Right.

MR. SHENIER: I offer the exhibits previously marked BT through DJ, inclusive, in evidence.

MR. O'HARA: No objection.

(Defendant's Exhibits BT through DJ received in evidence.)

xx

MR. SHENIER: You may examine.

MR. O'HARA: In connection with Defendant's Exhibit EQ, would you stipulate, Mr. Shenier, that the application

which was presented, the publication being EQ, it was on the representation that there was no conflict between the family's Christian name Vera Stewart and the Spanish trademark Vera?

MR. SHENIER: Correct. In other words, your Honor, the Patent Office cited Vera Stewart for cosmetics against Vera and the Patent Office after argument withdrew the objection and allowed the mark Vera over Vera Stewart.

THE COURT: All right.

MR. SHENIER: That is a matter of public record and I so stipulate.

MR. O'HARA: There is no conflict, is the point.

CROSS EXAMINATION

BY MR. O'HARA:

Q You import mantillas?

A We use to.

Q When did you import those?

A When?

Q Yes.

THE COURT: What is it?

MR. O'HARA: It goes over your head like a shawl, I believe. I am going to ask him to describe it in just a moment.

A I can't say when we last imported it, but it was about three years or maybe four years ago.

Q If I show you an ad that included them in '71, then you were still doing it in '71; is that correct?

A If we had some left, yes.

Q From whom did you purchase those?

A A company in Barcelona.

Q Was it the same person from whom you purchased the toiletries, the fragrances, and what have you?

A No.

Q It was not; is that right?

A It was not.

MR. O'HARA: May I see those recent ads, the ones we just marked, where we had the newspapers?

Q I show you what has been marked Plaintiff's Exhibit 17-Y and direct your attention to an advertisement which is circled on the bottom of the page. Do you see that?

A Yes.

Q And do you see in prominent type there the words "Perfume Vera"?

A Yes.

Q Following that in smaller type are the list of various articles.

A That is right.

Q And included in the articles are the mantillas?

A Yes.

Q And the date of that advertisement is what?

A December 3rd, 1970.

Q Do you recall there being brought to your attention any protest of Scarves by Vera with respect to the use of the word "Vera" by your company?

A Would you mind repeating it again?

(Question read.)

A Yes.

Q Was that by letter?

A Yes.

Q And following the receipt of that, did your company continue to make use of the term, as it had in the past, in connection with the goods it sold?

A Would you repeat that, please?

(Question read.)

A Yes.

Q You mentioned someone by the name of Vera Cosmetics and said someone selling by that name had been importing prior to the time you went into business.

A Yes.

Q In connection with the exporter in Spain, was there an exception made with respect to sales of that person?

A Yes.

Q Do you recall the dollar amount of the exception?

* * *

SCARVES BY VERA, INC.

vs.

TODO IMPORTS LTD., INC.

New York, October 22, 1974
10:00 o'clock a.m.

(Trial resumed.)

THE COURT: All right, gentlemen, let's proceed.

MR. O'HARA: I think the witness was on the stand yesterday under cross.

THE COURT: I think all that was going on at that time was that Mr. Shenier put Mr. Fernandez on in order that we may use the time. It seems to me that he would be interrupted anyway while you finish your case.

MR. O'HARA: Yes, I am ready to proceed, your Honor.

THE COURT: All right, call your next witness.

MR. O'HARA: Mr. Rubin, please.

S A M U E L R U B I N , called as a witness, having first been duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Rubin, have you been engaged in the fragrance business?

A Yes.

Q And with what company?

A With Faberge, Inc.

Q What was your association with Faberge, when did it start and if it terminated please tell us when?

A I was president, chairman of the board and organized the company in 1963.

Q Was Faberge a major marketer of fragrances in the United States?

A Yes.

Q And in what type of retail outlets were Faberge products sold, if you know?

A The exclusive specialty stores, department stores and the higher grade of drug stores.

Q Are there different stratas in the retail marketing world?

A Yes.

Q And you refer to this as in the higher type of store or outlet; is that correct?

A Yes, catering to the fashion conscious consumer.

Q Would there, within that category, fall a class that is known as boutique?

A Yes.

Q Were Faberge products sold in boutiques?

A Yes.

Q During the course of time that you were active with Faberge, did you have occasion from time to time to visit the retail outlets where their products were sold?

A Yes.

Q Did you make any practice to read the trade magazines that existed with respect to fashion and the industry in general?

A Yes.

Q Did those trade magazines also include fashion in the textile field?

A Yes.

THE COURT: I don't understand the question and the answer. What are you talking about, the industry trade magazine articles on fragrances as well as textiles? Is that what you are saying?

MR. O'HARA: Yes, your Honor, and I also want to establish --

THE COURT: No, I am not interested in that.

Q Did they advertise in many magazines and periodicals in the field?

A Yes.

Q Have you continued to read them since you severed connection with Faberge?

A Yes.

Q Have you followed developments in the fashion field since 1963?

A Yes.

MR. SHENIER: May it please the Court, are you qualifying this witness -- may I ask the counsel if he is qualifying this witness as an expert witness?

MR. O'HARA: That is true.

THE COURT: He said he was attempting to. If he offers Mr. Rubin, at whatever point he does as an expert witness, you will certainly have an opportunity on the voir dire to go into his expertise.

MR. SHENIER: Yes, but I didn't understand that was the purpose of Mr. Rubin's testimony.

THE COURT: The purpose of his testimony is very clear to me. All right, proceed.

If you want to examine on the voir dire, if you want to ask him questions involving his expertise you may.

Q Have you ever heard the name Vera in connection with the fashion field?

A Yes.

Q When, to the best of your recollection, was it you first heard that word?

MR. SHENIER: I object to the word "fashion field." That hasn't been defined. Just because he calls it fashion

field doesn't make it the fashion field.

THE COURT: That is cross examination, Mr. Shenier. You can explore with Mr. Rubin what he means. You don't have to interrupt the examination of this witness with objections like that.

MR. O'HARA: May I have the last question, please?

THE COURT: Have you heard of Vera in the fashion field; and he said yes. And you said,when did you first hear of it.

Q When did you first hear of Vera to the best of your recollection?

A Some 20 or more years ago.

Q In what connection?

THE COURT: That is about 1954?

THE WITNESS: Approximately. In the early 1950s.

A In what connection?

Q Yes.

A As one of the leading fashion designers in ladies' scarves.

Q Do you know of that word Vera being associated with any other textile goods of any kind in your experience?

A I don't know what you mean by textile goods.

Q I mean clothing, women's dresses, coats, adornments.

A Yes, I think I know it in relation to women's blouses.

Q Is that Vera?

A Vera.

Q Do you associate the same Vera as the one you mentioned in connection with scarves, is that it?

A Yes.

Q That is the only connotation you have at the moment?

A The only one I am aware of.

MR. O'HARA: Would you please mark this as Plaintiff's Exhibit 25 for identification?

xx (Plaintiff's Exhibit 25 marked for identification.)

Q I show you what has been marked as Plaintiff's Exhibit 25 for identification and ask you to look at it, please.

A Yes.

Q Do you recognize any of the names that appear on Exhibit 25?

A Yes, most of them are known to me.

Q Most of them? Are there any of them that are not known to you?

A The first one, Galatzine.

Q Other than that the names are known to you?

A Jeoffrey Beene, Morai. I believe I am familiar with all the others.

Q The ones that you are familiar with, in what connotation are you familiar with them?

A These are all essentially designers of fashion clothes.

Q Except for the ones that you do not recognize, do you know whether or not any of those names have been associated with fragrances?

A I do.

Q Will you please tell us are a majority of the names there in your experience --

THE COURT: Are you going to introduce that in evidence?

MR. O'HARA: Yes, I am, your Honor.

THE COURT: Don't be asking all these questions about them.

MR. O'HARA: All right, I offer them in evidence.

THE COURT: I don't know if Mr. Shenier objects.

MR. SHENIER: I don't understand.

THE COURT: He can't have a man testify about a document not in evidence.

(Plaintiff's Exhibit 25 marked for identification received in evidence.)

xx

MR. O'HARA: Your Honor, may I keep that? I have an extra copy for the witness.

Q Mr. Rubin, the name Lanvin, is that familiar to you?

A Yes.

Q And in what connotation was it first familiar to you?

A Fashion clothes and perfumes.

Q Was it familiar to you first in connection with clothes or with perfume?

A First with perfume, then with clothes, but both products were on the market simultaneously.

Q In connection with Hattie Carnegie, are you familiar with that as it is connected with clothes?

A In the same way.

Q And connected with fragrances?

A Yes.

Q And do you know which came first?

A Well, I know Hattie Carnegie came first as a fashion couturier and perfume followed as an accessory to fashion.

Q With respect to Jean Patou, do you recognize that name?

A Yes.

Q In what connotation did you first have a recognition of it, as clothes or fragrances?

A Well, in my case I first knew of it as perfume because that is the industry I was associated with, but there was no question about its being a fashion designer, fashion couturier.

Q With respect to Norell, what is your first associa-

tion with that name?

A First in fashion and later in perfume.

Q Only recently in perfume or has it been for some time?

A Oh, I think the past ten or 15 years.

Q Is it a practice to in any way relate advertising in the fashion field and the fragrance field in joint promotions or joint ads or in any form whatsoever?

A Yes, essentially in the higher --

MR. SHENIER: May it please the Court, I object to this constant leading of the witness. I would rather have the witness testify than my learned brother. He should ask a question and the answer should be yes or no. Let the witness testify.

THE COURT: I think that objection is well taken.

MR. O'HARA: I withdraw the question.

Q In connection with the advertising promotions that were conducted by Faberge, do you recall any instances of any promotions of your company that were had with other companies?

A Yes.

Q And will you tell us, please, what your recollection is in that respect?

A We had one promotion that we conducted jointly with Adele Simpson clothes. We had another promotion conducted

with a name not on this list, but it was the Stetson Hat Company and that was related to one of our fragrance names. And then our promotions were constantly associated with fashion through department store displays in fur, in dresses, in accessories such as hats and gloves and scarves.

Q In the product line of sportswear did they market any line of lipsticks and nail polish?

A Yes.

THE COURT: You are still doing what has been objected to. The question has been supplying the answer.

Q What line of articles other than fragrances did Faberge sell?

A We had the line of cosmetics which included lipsticks and nail polish and creams and hair products.

Q And what type of outlets were those products sold in?

A In the same outlets that purchased perfume from us.

Q In other words, that would include also boutiques; is that correct?

A Yes.

THE COURT: It doesn't seem to me, Mr. Rubin, that there is any essential difference between cosmetics and fragrances.

THE WITNESS: There are some specialty stores that do not have cosmetics along with perfumes and calognes, that

is to the extent that others do.

THE COURT: I can understand that, but it appears to me that if any organization decides to give out a line of perfumes, that the natural next step is to explain that by the various kinds of lotions and cleaners, things I would call cosmetics.

THE WITNESS: You are referring to the manufacture?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: So if Faberge had fragrance it wouldn't surprise me the next thing along with that would be selling creams and various kinds of things like that.

THE WITNESS: Yes. It is a reasonable development and yet such as in the case of Faberge I think for the first 25 years or longer we never had cosmetics. We added cosmetics after some 25 years.

THE COURT: It seems to me a step from fragrances to cosmetics is a much narrower step than the step from fragrances to fashion.

THE WITNESS: Yes, they are more kindred, but I believe it was Chanel essentially in the early years during the Second World War that actually was responsible for making the perfumes a direct accessory to fashion, and in that case it developed from the consumer mind that perfume was as

essential to a dress as a piece of jewelry, or even a color relationship.

THE COURT: Did the perfumers begin to design high fashion dresses?

THE WITNESS: No, quite the contrary, Chanel was famous for its fashion and then created its couturier, the famous one being Chanel No. 5, but each couturier had a fragrance, it became the accessory to fashion.

THE COURT: Let me ask you another question. Take Adele Simpson, for example, the couturier, it seems to be that a number of couturiers are now into that field, like Cardin.

THE WITNESS: Yes.

THE COURT: What about the designers? Among that list are there any textile designers that are in the fragrance business as well along with the list on the exhibit you have?

THE WITNESS: Well, this list is not so much the textile designer as fashion designers, clothes designers.

THE COURT: I understand that.

THE WITNESS: Yes. Most every name has a perfume, Norell, Worth, Givenchy, Dior, Germaine Monteil. By way of example, Germaine Monteil was one of the first leading fashion designers typical of Chanel,and then later in its development we then found a line of perfume and cosmetics.

THE COURT: It slipped my mind for the moment that

Vera Scarves also designed blouses, dresses and that sort of thing.

THE WITNESS: Yes.

THE COURT: All right, thank you very much.

All right, Mr. O'Hara.

Q Mr. Rubin, I show you what has been marked Plaintiff's Exhibit 26 for identification and I ask you if that is representative or if you can identify the advertisement in the magazine in which it appears? Do you know the magazine?

A Yes.

Q Is that a fashion magazine in your opinion?

A Yes; a leading fashion magazine.

Q Directing your attention to the portion which has been marked Plaintiff's Exhibit 26 for identification, is that in your opinion representative of the type of advertising which you testified with respect to designs to fragrances?

A In a general way, yes.

MR. O'HARA: I offer it in evidence.

MR. SHENIER: No objection.

(Plaintiff's Exhibit 26 for identification received in evidence.)

xx

MR. O'HARA: Your Honor, I might add this formerly was part of 4. Exhibit 26 is a portion and it is contained in one of the large portfolios, but I wanted to call particular

attention to it so I had the page marked as an exhibit.

Those are all the questions I have, Mr. Rubin.

THE COURT: Mr. Shenier.

MR. SHENIER: Yes, sir.

THE COURT: You may cross examine.

MR. SHENIER: May I have just a moment, your Honor.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Rubin, Faberge never made any clothes; is that correct?

A No.

Q As I understand your testimony, this practice, I think you said, started with Chanel.

A No, in that area. It may have been preceded, but Chanel was responsible for having accelerated the relationship.

Q In other words, Chanel started as a haute couturier and then branched into fragrances?

A Yes.

Q Chanel sold usually one of a kind, it was made specially?

A O f what?

Q Haute couturier. Would you tell us what haute couturier means?

A Oh, it is a highly specialized designer of dresses

which are generally considered unique or original.

Q And those are not mass produced say in Japan?

A Not in Japan, but they are mass produced in other countries.

Q After -- in other words, after the design is sold?

A It was a development following the original characteristic of the design.

Q But you originally said haute couturier meant one of a kind?

A Originally, yes.

Q If you saw a garment the first time at Balenciaga the woman would die?

A I don't know she would die. I don't qualify as a medical expert.

Q What are the qualifications of a haute couturier dress?

A Oh, the range is large. It could run from -- at that time a hundred dollars was very expensive when the dollar was worth a dollar. It was a rather expensive outfit, but it would run from a hundred dollars to a thousand dollars, and many times in many cases more. That was for the dress. Accessories would be less.

Q I am not asking about accessories. I am just asking about the dresses first. This practice of associating a

fragrance with haute couturier developed in France?

A Yes.

Q And then spread to this country afterwards?

A Yes.

Q The Chanel and the Balmain, is that a France design?

A Yes.

Q Dior, Givenchy, they are all haute designers that spread later into the couturier business?

A Not only dresses. They also designed blouses, coats, shoes and gloves, and many accessories.

Q They started as haute couturiers and then they spread afterwards?

A Some may have started with blouses and then went into dresses.

Q Which ones?

A I don't know exactly which line.

Q Don't testify to something you don't know about, please.

THE COURT: Come now, Mr. Shenier. Let's be civilized.

MR. SHENIER: I don't like a lot of conjecture, your Honor.

THE COURT: Let's be civilized. Ask your questions.

Q Do you consider David Crystal haute couturier?

A I am not too familiar with David Crystal.

Q He is a clothes designer?

A Yes, but I am not too familiar with David Crystal.

Q You have been around department stores?

A Yes, but I am not too familiar with David Crystal. If you forgive me, I happen not to be.

Q Did Revlon ever have any clothes?

A Did you say Revlon or Revillon?

Q Revlon.

A Not to my knowledge.

Q Do you consider Levi Strauss haute couturier?

A No, Levi Strauss is in cottons, denims and jeans.

Q And Levi Strauss, if they made a perfume you wouldn't consider that appropriate, would you?

A I would not consider it too appropriate, no.

Q Improper or proper?

A I would not consider it proper for a high fashion perfume.

Q Yes. In all these other high fashion designers, at the time they branched into the fragrance field there was no other fragrance being sold under that name; is that correct?

A That is correct.

Q And these names are all last names, surnames of dress designers, they are not first names?

A I believe they aren't, yes.

Q Emilio Pucci, for example, he started out as a dress designer in Italy?

A Yes.

Q And his name was Emilio?

A Yes.

Q And his last name was Pucci, that is a surname?

A Yes.

Q Faberge is not considered -- what price range does Faberge sell in?

THE COURT: What difference does it make?

MR. SHENIER: Faberge is a low class perfume.

THE WITNESS: I'm sorry, I take exception to that.

THE COURT: I should think you would.

THE WITNESS: Yes.

THE COURT: What difference does it make? Mr. Rubin hasn't testified about anything in regard to Faberge other than the fact that at some point they did some of their advertising in connection with fashions, and department store displays, and so forth. So why do you have to get involved in Faberge?

MR. SHENIER: Well, your Honor, this whole case is predicated on the theory that Vera has a right to expand --

THE COURT: I understand that. You take the view, which I am not sure is right, that the only fragrance and

fashion house that operate the same are when a haute couturier decides to go into perfumes. I am not sure if the article is mass produced that they will not go into that field. I am not sure of women's clothes, I know men's fashions. I know Pucci does men's clothes, and certainly they are not one of a kind. I certainly know that Bill Blass and Cardin do men's clothes, and they are certainly not one of a kind. I had understood, as a matter of fact, that the French houses have begun to mass produce some of their products. I don't know whether that is true or not.

Is that correct?

THE WITNESS: Well, if your Honor please, in this morning's issue, to bring it up to date of The New York Times in the early part of the section there is a full page advertisement, I believe by the Altman store which features Cardin clothes and relates it to fashion, to perfume, to jewelry, and it is in this morning's New York Times. Now, that is a mass produced fashion company, having started as a haute couturier.

THE COURT: Aren't many of the French and Italian houses following the same pattern having the style on the market mass produced?

THE WITNESS: Yes, it is a trend.

Q. That trend, though, was of fairly recent origin

though. When did Chanel start?

A Start what?

Q Their fragrances, when did they switch from haute couturier to fragrances?

A They didn't switch, they included it.

Q Thank you for correcting me.

A I would say in the 1940s or late thirties.

Q And the rest of them followed along later?

A Yes.

Q Take Norell which is fairly recent.

A In clothes or perfume?

Q Clothes.

A No, Trigere and Norell are all clothes fashion designers, but the perfume was created subsequent.

Q When did they start with the clothes?

A Trigere? Well, she is in our age bracket, so she may have started when she was perhaps 20 or 25 years of age, not knowing how old you are.

Q Well, I'm 72.

A So am I. I would say roughly 40, 50 years.

Q And only recently did she branch into perfumes; is that correct?

A No, Trigere has had a perfume for the last 15 or 20 years.

Q And Norell, though, is a fairly recent arrival in the fragrance field?

A As recent as the other, perhaps 15 years or more.

Q So if a company, for instance, take Norell, had been selling Norell perfume for say ten or 12 years --

A 15 or 20 years.

Q Say another company has --

A Oh, another?

Q Another company, not Norell, Norell made clothes and somebody else had been selling perfumes for say 12 years, 15 years, and then Norell decided to go into the perfume business, do you think that Norell would have done this or it was equitable?

A I don't understand your question.

MR. O'HARA: Your Honor --

MR. SHENIER: He is an expert witness, your Honor.

A I don't understand your question. I don't understand your English, is what I mean.

THE COURT: He can't make a decision as to whether something is equitable or not. He is not here as an expert in jurisprudence. He is here as an expert, if at all, in the field of fashion fragrances.

Q In the field of fashion fragrances would Norell have put out a fragrance if somebody else already had it?

THE COURT: How can he answer that question?

MR. SHENIER: As a business judgment.

THE COURT: He can't answer the question as to what somebody else would have done, Mr. Shenier. Particularly I don't think he could answer it in the field of what the designers or couturiers would do.

MR. SHENIER: Yes.

Q This list, Exhibit 25, Pucci started as a clothes designer?

A Yes.

Q Bill Blass?

A Yes.

Q Clothes designer?

A Yes.

Q Hattie Carnegie, clothes designer?

A Clothes and accessories. Bill Blass, clothes and accessories.

Q When did the accessories come?

A Oh, either at the same time or very soon thereafter. It was a natural development. The same is true of Chenel.

Q Clothes first,and then accessories, and then perfumes?

A Yes.

Q Is that the order?

A Accessories and perfumes would be listed together.

Q In other words, it would be clothes, accessories, and perfumes in that order?

A I can't guarantee that one preceded the other, but the natural development was clothes first, and then accessories later, and perfumes, cosmetics are included in accessories.

Q Thank you. Do you know anyone that started with accessories first,and then went into clothes, and then went into perfumes, anyone on the list?

A Yes.

Q Which one?

A Hermes.

Q What did they start with?

A Leather bags, shoes, scarves, oh, a long list of accessories.

Q And they are located where?

A Paris, France.

Q They made leather goods first?

A Leather goods, but high quality, high priced leather goods, high fashion.

Q And that's true of Gucci which is not on this list, Gucci did the same thing with leather?

A Yes, but not only leather.

Q Did Hermes ever make any clothes after that?

A I am not too familiar. I don't believe they have.

Q In other words, they went from leather to perfume?

A No, they didn't go from leather to perfume, they went from accessories and included perfumes along with their accessories.

Q But they never made any clothes, haute couturier?

A Not that I am familiar with. The accessories were haute couturier.

Q I am talking about clothes.

A I testified that I am not too familiar with clothes relating to Hermes.

Q Is there any other company on this list that made accessories first and then went into clothes afterwards?

A Aside from the few I just mentioned I think the others were all clothes.

Q All haute couturiers first?

A Yes.

Q And then they went into accessories. You would include perfume as an accessory?

A Yes.

Q It wouldn't be proper then, according to your testimony, if I understand it correctly, to use, for instance, a Chanel perfume with a Christian Dior dress?

A It is not improper.

Q Then you could use any perfume with any dress?

A In a free country you can, yes.

Q I don't mean free country. I mean --

A I mean where you are not --

Q How --

THE COURT: The point is --

THE WITNESS: There is no rule, no law.

THE COURT: The point is it is not what the individual can do. The question is what people are promoting. Of course, Cardin wants to buy everything it manufactures whether it be clothes or any other lotions and so forth, which it wants you to buy. That doesn't mean you can't buy a Cardin dress or suit and use somebody else's lotion.

MR. SHENIER: May it please the Court, the thing I have trouble is the designation of the scent as an accessory to clothes.

THE COURT: The point I think that Mr. Rubin is testifying to, and the point I gather he is attempting to establish is the fact that there has been a trend in the area for fashions, for clothes and fragrances to accompany one another in a promotional way. Whether that has been fully established or not is something else. I certainly understand it. That is the purport of his testimony.

THE WITNESS: If your Honor please, I can cite a few

specific examples and be very quick with them, too. When Fabrege created a perfume with an outlandish title called Straw Hat we did a combined promotion with the Stetson Hat Company. The promotion featured the phrase originating with Stetson that Stetson tips his hat to Fabrege's Straw Hat. That is one specific example.

When Faberge created a perfume called Would You, that because of its design, the package and all was related to sports clothes. All the department stores who bought Would You perfume from Fabrege related it in windows with sports clothes, so there was a direct fashion relationship between Would You and sport clothes, and first --

Q That merely is an advertising gimmick, isn't it?

A It is not a gimmick, sir. It is promotional.

THE COURT: Mr. Shenier, please ask questions. Don't argue with him.

MR. SHENIER: He volunteered this. This is not in response to my questions.

THE COURT: I understand that, but ask questions about it. Don't argue.

Q I don't see the bearing --

A No more unique than advertising the Ford car with comfort and luxury.

Q Please.

* * *

that I am going to have to stop. The only thing this witness has testified to is the fact that in the instances he has mentioned that there is a relationship between fragrances and clothes, and accessories. Now, that is about all he can testify to and you can cross him on that. You are asking if it is right and so forth and he can't answer that type of question. It wouldn't be helpful to me if he did.

MR. SHENIER: Thank you, your Honor. I stand corrected.

I have no further questions of this witness.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Rubin, are you familiar with the term signature scarf in the fashion field?

A Yes.

Q Is that an accessory included within your terminology of an accessory?

A Yes.

Q Whose names do you equate with signature scarves?

A Oh, Christian Dior, Vera, Lanvin and perhaps a dozen others.

Q And that was not originally the type of accessory that most of the people --

THE COURT: Come, Mr. O'Hara.

MR. O'HARA: All right. That's all.

(Witness excused.)

THE COURT: Call your next witness.

MR. O'HARA: Mr. Rubenstein, please.

M E Y E R H . R U B E N S T E I N , called as a witness having first been duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mr. Rubenstein, are you presently employed?

A No.

Q Who was your last employer?

A Bonwit Teller.

Q In what capacity?

A I managed the Palm Beach store.

Q And prior to that time had you been employed by any other department stores?

A Well, prior to that I was working for Martha in Palm Beach for two years.

Q And who is Martha?

A Martha?

Q Yes.

A Owner of a very high fashion specialty store that

has branches that originated in New York, has branches in Palm Beach and Bal Harbor.

Q And prior to that where were you employed?

A I was with Federated Department Stores.

Q And that would have been approximately when?

A It is way back. Federated, I was there from about 1966 to 1970.

Q Prior to that?

A Prior to Federated?

Q Yes.

A I was with Bonwit Teller's merchandising all the better ready to wear and sports wear.

Q And prior to that time?

A I was with Saks Fifth Avenue for 13 years merchandising all the better ready to wear.

Q When you say merchandising, what was the area of your responsibility or duty?

A The contact between the president of the store and the buyers. I covered the markets with the buyers and we decided on how much we were going to spend, and where it was going to be spent, and how we were going to promote it.

Q When you say where it was going to be spent, you mean whose merchandise was to be purchased?

A Yes; and we shopped the market.

Q So you had a voice in the decision making progress of the goods that were to be stocked in the stores which you have mentioned?

A Yes.

Q And in their marketing in the stores?

A Yes.

Q And your total experience in this area has been how long?

A When I came out of service I suppose it was about 35 years.

Q Mr. Rubenstein, I show you Plaintiff's Exhibit 25 for identification and ask you if you recognize the names that appear thereon.

A Yes, I know them all.

Q Does the name Vera mean anything to you as it relates to the fashion field?

A Yes.

Q And what does it mean to you?

A Well, my only experience with that would be when I would be attending advertising meetings and the merchandise would be brought up for advertising, and they would say, if it was from the main floor which I had nothing to do with, they would say we were advertising Vera scarves.

Q Did you become familiar with such a thing as a

signature scarf?

A Definitely.

Q And in your recollection what was the first signature scarf?

A Well, the first signature scarf that I really came in contact was with Hermes.

Q How long ago was that?

A Maybe 20 years.

Q And did you become familiar with any signature scarf as it related to Vera?

A Yes, definitely. I would say that Vera was the first one in America that had a signature scarf.

Q How many of the other names on Exhibit 25 to your knowledge has produced or is producing signature scarves?

MR. SHENIER: It hasn't been established the other names make any scarves.

THE WITNESS: Well, I can tell you whether they make scarves or not, so if that will help you any, I don't think it will help.

I know Galatzine does not, Gucci does make scarves, Bill Blass does make scarves. Hattie Carnegie I don't know whether they are in the scarf business, but I think they do make scarves. It may be a franchise, but I think they use the name Hattie Carnegie on a scarf.

Chanel, scarves, yes. Madeline de Rauch I don't think make scarves. It is a French house and I don't think they make scarves. Balenciaga when he was living and in the couturier business I think also makes scarves.

H. Morai makes scarves, Lanvin definitely makes scarves. Guy Larouche I am not sure, but I think so. Mary Quant definitely does not make scarves. It is a fur house.

Germaine Monteil was primarily a perfume house. It also went into couturier. I don't think they make scarves.

Adele Simpson definitely makes scarves.

Gucci devinitely makes scarves.

Pauline Trigere definitely makes scarves.

Nettie Rosenstein I am not sure makes scarves.

Christian Dior definitely makes scarves

Givenchy definitely makes scarves.

Pierre Balmain makes scarves.

Geoffrey Beene definitely makes scarves.

Ricci, I am not sure of.

Jean Patou, yes, he does make scarves.

Norman Norell, yes.

And Worth, I don't think that Worth does make scarves. I am not sure that Worth is even in business.

Q Mr. Rubenstein, of the names on the list without reviewing each one separately, are there any names on that list

that you do not recognize as there being a fragrance under that name?

A Yes, there are some on here that do not have a fragrance.

Q All right. Would you please tell us those who do not have a fragrance, to your knowledge?

A Madeline de Rauch does not have a fragrance.

Mary Quant I don't think has a fragrance.

Revillon Fur House I don't think has a fragrance.

Worth I'm sure has a fragrance. I don't think they are in the couturier business any longer. I think that covers it.

Q Exhibit 25, would you or would you not say that that is a rather complete list of the recognized couturier fashion names?

A Yes. I think it covers it fairly well.

Q It would be at the very least a majority or less than a majority?

A No, I think it is a majority.

Q Insofar as the word Vera is concerned where in your opinion does the word Vera equate with the names that appear in Exhibit 25?

A Well, I think Vera equates with any of these people in quality merchandise. I mean that Vera is synonymous

with a signature scarf, the same as these people are synonymous with high fashion and there is the equality of it.

MR. O'HARA: No further questions.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mr. Rubenstein, you do mention Balenciaga?

A I did.

Q Schaparelli?

A She is no longer in business. I think all she does is have prints.

Q She doesn't make scarves?

A Yes, she does make scarves, but I think it is a franchise.

Q This scarf business all came later, right?

MR. O'HARA: Later than what?

Q When they first started as either couturiers or then into accessories, and then they started later --

A Yes.

Q They didn't start as a scarf business?

A No, they didn't.

Q Did you buy any Galatzine in Gimbels?

A No.

Q In Macy's?

A They might have.

Q Do you know for a fact?

A No, I don't.

Q All right, I just want --

A No.

Q Can you buy Gucci clothes in Gimbels?

A No.

Q In Macy's?

A No.

Q Can you buy Bill Blass clothes in Gimbels?

A No.

Q Can you buy Hattie Carnegie clothes in Gimbels?

A No, Hattie Carnegie is no longer in business.

Q Chanel clothes in business?

A Chanel they might have.

Q Clothes?

A Clothes, they might be able to. They buy the original and copy it.

Q But they are not made by Chanel then?

A No, but it is still named Chanel.

Q Named Chanel?

A Sure, they can use the name Chanel, copy of Chanel

Q Would you please listen to the question and answer it?

A Sure.

Q Does Chanel itself sell any Chanel clothes at Gimbels?

A She might sell one model and they can do whatever they want with it. They can copy it at whatever price range they want.

Q de Rauch?

A Madeline de Rauch? No, I don't think.

Q Balenciaga?

A The same way as Chanel. They can buy a model from Balenciaga.

Q I am not talking about a model of Balenciaga. Can you buy clothes in Gimbels?

A No.

Q Do you know Boutillier?

A Yes, with Best & Company. I knew him before he died, yes.

Q Did you ever work for him?

A No, I didn't.

Q Could you buy Anne Klein clothes in Gimbels?

A They might sell them, yes.

Q To your knowledge would they sell them?

A I think they do.

Q Lanvin clothes?

A Yes.

Q Mary Quant?

A Maybe.

Q Could you buy Revillon furs?

A No, they are confined to Saks Fifth Avenue.

Q Not in Gimbels?

A Not in Gimbels.

Q Germaine Monteil in Gimbels?

A Germaine Monteil as far as I know the clothes I don't think they sell. The perfume, cosmetics, I don't know whether they do or don't.

Q Adele Simpson clothes in Gimbels?

A Maybe, yes.

Q Gucci shoes in Gimbels?

A No, Gucci shoes are only sold by Gucci.

Q Trigere clothes in Gimbels?

A No, definitely not.

Q Nettie Rosenstein?

A No, Nettie Rosenstein clothes is out of business.

Q Givenchy?

A Model.

Q Clothes?

A No clothes.

Q Pierre Balmain?

A No.

Q Geoffrey Beene?

A Maybe. He makes a cheaper line and they might be

buying it. It is known as Beene Bags.

Q Hermes?

A Hermes is only sold by Hermes in their store or outlet in New York City which is a part of Bonwit Teller.

Q Ricci?

A Clothes, no, they don't sell.

Q Jean Patou?

A No.

Q Norell?

A Definitely not.

Q Worth you said is no --

A I don't think Worth is in the couturier business.

Q Schaparelli is no longer in business?

A No.

Q So these haute couturiers' named clothes are sold in higher priced stores?

A Not necessarily. You are confusing me and I am trying to straighten you out. You can buy any model you want from any of these stores,and copy it, and use the name. They do not buy stock. In other words, you cannot go into any of these stores and buy a Balenciaga and get it in your size.

Q Are you telling this Court that I can buy a Balenciaga dress, copy it, and say this is made by Balenciaga?

A No.

Q You think I have a license when I buy one dress to perpetrate a fraud on the public?

A You are not making a fraud if you say it is a copy.

Q It is a Balenciaga copy?

A That is it.

Q But it is not a Balenciaga dress?

A It is as far as the original model.

Q You can't buy the original model in the store?

A Certainly not. They are not allowed to sell the original model. Because they bring it in under bond and don't permit it to be sold.

Q And they don't put a Balenciaga name?

A No.

Q They don't say it is a Balmain dress if it is made by --

A They might say it is a Balmain copy.

Q They don't put a Balmain label on it?

A No, of course not.

MR. SHENIER: I have no further questions of this witness.

MR. O'HARA: No further questions.

THE COURT: On all of this, Mr. Rubenstein, like Gimbels, could you buy a signature scarf from any of those stores?

THE WITNESS: I think you might be able to, yes.

THE COURT: What about fragrances?

THE WITNESS: Fragrances, yes, maybe. They might be able in some cases, they have no control over it. I think usually it is released by a fragrance house and if they want to sell Gimbels why they may sell them.

THE COURT: Anything further?

MR. O'HARA: No, nothing further, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. O'HARA: Mrs. Vera Neumann.

V E R A N E U M A N N , called as a witness, being first duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. O'HARA:

Q Mrs. Neumann, are you associated with the plaintiff Scarves by Neumann?

A No.

Q You are not associated with them now? Are you employed by Scarves?

A Yes.

Q And when did you first become associated with Scarves by Vera?

A In '45.

Q And what was your role in your first association?

A I was a partner.

Q With whom?

A My husband, Mr. Neumann, and my partner Mr. Hamm.

Q And that partnership subsequently became the corporation which is the plaintiff here; is that right?

A Right.

Q And do you hold any office in the corporation now?

A Yes, I am president of all the Vera Industries.

Q You are president of the plaintiff corporation; is that correct?

A Yes.

Q When the business was founded --

THE COURT: I don't understand. I thought you first testified you were no longer associated with --

THE WITNESS: I said Neumann. It never was Neumann. It was always Vera.

THE COURT: Now you say you are president of Vera Industries?

THE WITNESS: Yes.

THE COURT: What is that?

THE WITNESS: That is linens, Linens by Vera, Blouses and Sportswear by Vera, and Scarves by Vera.

THE COURT: What is the difference between the Vera

Industries and the Scarves by Vera, the corporation?

THE WITNESS: It now became all the industries together.

THE COURT: Under the name Scarves by Vera?

THE WITNESS: Yes, one is Scarves by Vera and one is Linens by Vera.

THE COURT: But it is all under Scarves by Vera?

THE WITNESS: Yes.

THE COURT: And you are president of that?

THE WITNESS: Right.

Q When the business was first started as a partnership, what products were made?

A Well, first it was linen. Then it was scarves and sportswear -- we did little tops.

Q When you say scarves, approximately what year would that have been?

A Well, that is almost at the beginning, like '45.

Q And the scarves that were made at that time -- did they have any name on the scarves?

A Yes.

Q What was on the scarves?

A Vera.

Q And from that date to this have the scarves of the partnership and the succeeding corporation had that name on it?

A Yes, it did, scarves.

Q So far as you know is that without exception?

A Yes.

Q When you nod your head the reporter can't get an answer.

A Oh, yes.

Q Did there come a time when goods other than linens and scarves were made by your company?

A Sportswear.

Q What was included within sportswear?

A Blouses, pants, tops, dresses, evening skirts.

Q And again was the name Vera associated with those goods?

A Yes.

Q Have you in the course of your duties visited retail outlets to examine the promotion, if there were any, of your particular products that were sold by Vera?

A Yes.

Q And in what type of outlets have you had occasion to go

Q Well, Burdines was one. They had a big promotion in Miami and the department stores in California.

Q Let's take the Miami situation and please tell us with respect to Burdines what it was that transpired there as

it related to Vera?

THE COURT: What's the name of the store?

MR. O'HARA: Burdines, Miami, your Honor.

A Well, they had a whole display of my things on the ground floor, and they had a fashion show, and all the related things that I have done.

Q Would that be a separate part of the store that would be set aside?

A Well, in that particular case it was.

THE COURT: When was this done?

THE WITNESS: I would say about ten years ago.

Q In your experience are there different merchandising levels with respect to clothing?

A Yes.

Q And are there different types of department stores, whether you classify them fashion, first class, high class, but there are different ones; is that correct?

A Right.

Q Do you know the reputation of Burdines in Miami?

A Well, I would say that was middle.

Q It is about the middle; is that right?

A Yes, middle, upper.

Q For example, is there a store by the name of Martha's?

A Yes.

Q How would you characterize that?

THE COURT: What difference does it make?

MR. O'HARA: It came up.

THE COURT: You are not helping very much with your examination. If you are going to ask about retail stores and so forth, let's find out the names and what they are, the stores that Vera products have been sold to. I am not interested whether Martha is high fashion or low fashion unless the question is coupled with the fact whether or not Vera products were sold there.

Q Were Vera products sold in Burdines?

A Yes.

Q Where are they sold in Los Angeles, if you know?

A Well, I can't name all the stores, really. Most of the department stores in Los Angeles.

Q Are they sold -- Vera products sold in Macy's, New York?

A I think so, yes.

Q Gimbels?

A Yes.

Q Lord & Taylor's?

A Yes.

Q Is that representative of the type of department store that in your experience sold Vera products?

A Well, Lord & Taylor would be a good representative kind of --

Q In connection with --

THE COURT: What other stores in New York are your products sold in? Are they sold in Bloomingdale's?

THE WITNESS: Yes.

THE COURT: Bergdorf Goodman?

A Bergdorf, Bonwit, Altman's, all of those.

THE COURT: Sak's Fifth Avenue?

THE WITNESS: Sak's Fifth Avenue.

THE COURT: Are all your lines sold in Altman stores?

THE WITNESS: No, because some of them do not have linen departments.

THE COURT: I am talking of scarves.

THE WITNESS: Yes.

THE COURT: What about your sportswear, blouses?

THE WITNESS: I would say most of them. I really don't know much about the sales, but I would say most of them.

THE COURT: Are you going to have somebody here that is going to tell us about the sales?

MR. O'HARA: About the sales themselves?

THE COURT: Yes.

MR. O'HARA: Nothing except what I already had, your Honor, the number of retail outlets, the type of stores,

and I have the volume of sales.

THE COURT: There is an issue in terms of where these products are sold. I don't know how important an issue it is, but apparently seems to be one dear to Mr. Shenier's heart. I will be here tomorrow and I don't know whether all the evidence is in, but if Miss Neumann will give us the information, as I understand now, as far as the scarves are concerned, and I guess New York would be as good an example as any, but according to Miss Neumann's testimony her scarves are in the so-called high fashion stores and the medium low priced stores as well. The question is she doesn't know about her other lines. I am interested in knowing whether the blouses and sportswear, can they be bought in Bloomingdale's?

THE WITNESS: I know Lord & Taylor has a department in blouses and I know Bloomingdale's.

THE COURT: And Bloomingdale's, too?

THE WITNESS: Yes, those two stores I know.

THE COURT: You can get your whole line in Lord & Taylor's and Bloomingdale's?

THE WITNESS: Yes. I am not too sure about the other stores, because I know that Altman's we sell to, too.

THE COURT: What about Gimbels and Macy's?

THE WITNESS: I think we sell them, too.

THE COURT: The whole line?

THE WITNESS: Yes. I just don't want to say something that I can't back up, but I would assume that we do.

THE COURT: I think you can find somebody from the plaintiff who can give us some exact information on that. I would be interested.

MR. O'HARA: You mean the exact outlets that we have?

THE COURT: As I said I don't know how important this is, but Mr. Shenier seems to think it is important. I want to know whether these blouses are sold in what I would recognize anyway as being a high fashion retail outlet. There is a whole list of those in New York. It would enlighten me if the decision turns on it to know, so I would appreciate that information.

Sorry to have interrupted.

Q Do you know whether or not the plaintiff's products are sold in Marshal Field in Chicago?

A Yes.

Q Do you know the reputation of Marshal Field?

A I would say they are about on a par with Lord & Taylor.

Q Do you know whether or not Vera products are sold in Neiman Marcus?

A Yes.

Q And where are they located?

A In Texas, I think.

Q And are you familiar with their reputation?

THE COURT: That is a rather big state. I think it is in Dallas.

THE WITNESS: Oh, Dallas, yes.

Q Are you familiar with their reputation as it would relate to the department stores which you have previously mentioned?

A Well, maybe that is a notch higher.

Q A notch higher?

A Yes.

Q And I believe you stated -- do you know whether or not your products are sold by Magnin in California?

A Yes.

Q Where do you equate Magnin with respect to the outlets we have been talking about?

MR. SHENIER: I would like to set a date. I would like to indicate whether scarves and blouses are the products included. We may get an erroneous picture.

THE COURT: I agree with that.

A I would say both in Magnin's.

Q You would say both?

A Right.

THE COURT: What Magnin is this?

MR. O'HARA: This is I. Magnin, your Honor. There are two of them, your Honor. We sold both of them -- in San Francisco -- where the other one is I don't know.

THE COURT: You sell your blouses and sportswear to them?

THE WITNESS: Yes.

THE COURT: What about Neiman Marcus?

THE WITNESS: I think they sell them both there, too.

THE COURT: And Marshal Field's?

THE WITNESS: Marshal Field definitely.

Q Offhand, do the names of any other department stores in other cities similar to the ones I have just been questioning you about occur to you?

A Well, Robinson's in Los Angeles. Most of the Los Angeles department stores. Shillatoes.

Q Is there a store by the name of Hudson's in Detroit?

A Yes, Detroit.

Q Do you know whether or not any of your products are sold there?

A All of them.

Q All of the Vera products are sold there?

A Yes.

Q With respect to Boston, for example, do you know

any department stores there that sell Vera products?

A I know they all do.

Q You don't know?

A I don't know the names. I know we sell all of the departments.

Q Filenes?

A Filenes, yes.

Q And you sell Filenes?

A Yes.

Q Would that be the line, blouses, linens and scarves?

A Yes, everything.

Q Do you have any idea of the number of retail outlets which sell one or more Vera products?

A I wouldn't want to be quoted, but I think it is about 3,000 or more.

Q You think it is about 3,000?

A Yes.

Q Your area of activity has nothing to do with marketing; is that correct?

A Right.

Q However, where there are special promotions have you participated in any way?

A Yes.

Q Have you had occasion to participate personally?

A Yes, I have.

Q And be personally present?

A Right.

THE COURT: She already testified about one, Burdines in Miami.

MR. O'HARA: I didn't think it was clear, your Honor, that she was personally present at the time of the promotion and participated in it.

THE WITNESS: Yes.

THE COURT: She testified she did that in Burdines.

MR. O'HARA: I didn't understand the prior testimony. I didn't understand at first that she was actually there. She said she set aside an area, but I wanted to have her participation.

THE COURT: I believe I have been listening to Miss Neumann's testimony more carefully than you have. It is very clear she was present.

All right.

Q Mrs. Neumann, is there known in the trade the term signature scarves?

A Yes.

Q And when was the first signature scarf that came to your knowledge?

A You mean other than my own?

Q No, the first one.

A Was mine here in this country. It was in about '45.

Q In this country?

A Yes.

Q You believe that yours was the first; is that right?

A Mine was the first one, yes.

THE COURT: That was in 1945?

THE WITNESS: Yes.

Q Since that time have there been other signature scarves?

A Yes.

Q Could you please tell us the names of some of the other scarves that have come to your attention since '45?

THE COURT: We have had testimony on that, haven't we? I don't know how important it is going to be to you, but we just had testimony about that.

MR. O'HARA: I agree. It is redundant, your Honor.

Q Mrs. Neumann, aside from scarves and blouses has Vera also made any other product?

A Linens.

Q Belts?

A Belts.

Q Tote bags?

A Tote bags.

Q I think I asked you before for all the products.

A Also I am under license to Burlington for sheets under the name of Vera and to Form Fit Rogers under the name of Vera.

Q What do they make?

A They make lingerie.

Q Are there any other products?

A Mikasa.

THE COURT: That is also under license?

THE WITNESS: Yes.

Q In connection with Burlington --

THE COURT: Do they have clothes?

THE WITNESS: Yes.

Q Is that also true with respec: to Burlington sheets?

A Yes.

Q Is the name Vera worked into the produce itself, if you know?

A Solely signature.

Q Is it hand tag by --

A Hand done.

Q It is in the material, in other words?

A Yes.

Q So that it forms a integral part and lasts the life of the material; is that correct?

A Right.

MR. O'HARA: No further questions.

CROSS EXAMINATION

BY MR. SHENIER:

Q Mrs. Neumann, would it be correct if I said you were primarily an artist?

A Yes.

Q As a matter of fact you are a well known artist. These designs of yours were first applied to scarves because they received them well?

A Yes.

Q And they applied to linens because they would receive them well?

A Yes.

Q And plates?

A Yes.

Q Most of your designs are because they are able to apply the art to your artistic design?

A Yes.

Q You never had any experience in oils, fragrances, or anything like that?

A No, but --

Q Please answer the question.

A No.

Q So you have no expertise in fragrances, you are an artist?

A Yes, just the ones I like.

Q What?

A Just the fragrances I like.

Q So actually your appeal, your design is an appeal to the eye, a visual appeal?

MR. O'HARA: I object to that question.

THE COURT: Objection overruled.

Q When you buy a perfume you don't look at the perfume, you smell it, don't you?

A Yes.

Q So it is an olfactory sense it appeals to?

A Yes.

Q Have you heard of David Crystal?

A Yes.

Q What do they do?

A Sportswear.

Q They make sportswear. Would you say it is sort of on a par with your sportswear?

A Roughly, I would say.

Q Do you sell any of your sportswear to Bergdorf Goodman?

A Blouses.

Q Sportswear?

A Well, I don't know how you separate it.

Q Lately you have been making dresses?

A Right.

Q Mass produced dresses. Any of your dresses find their way into Bergdorf Goodman?

A They could, blouses --

Q Pardon?

A Blouses have, but I don't know whether --

Q I am not asking about blouses. I am asking about dresses.

A I really couldn't answer you truthfully.

Q Have you ever heard of Vera Custom Fashion?

A No.

Q At 25 East 77th Street?

A No.

Q A haute couturier place that makes custom clothes?

MR. O'HARA: Your Honor --

MR. SHENIER: I will tie it up. I am asking her if she ever heard of them.

THE COURT: Let's take a recess.

You are testifying yourself.

(Recess.)

MR. O'HARA: The last question was objected to,

your Honor.

THE COURT: The objection will be sustained to the question.

You may ask her as I indicated before I left. I don't want you to testify.

What was that name?

MR. SHENIER: Vera Custom Fashions.

Q Mrs. Neumann, I show you a copy of pages taken from the New York telephone directory, which has been identified as Defendant's Exhibit BR, and ask you if your name appears on that, on those pages?

MR. O'HARA: You being the plaintiff.

MR. SHENIER: Yes.

A Vera Blouses Incorporated. They state the address and --

MR. O'HARA: I don't think the witness understands the question. The question is: Is the plaintiff's name on that piece of paper.

MR. SHENIER: There are two pieces of paper, two pages from the New York telephone directory.

A Yes, my name is on here.

Q Do you also see Vera Custom Fashions on the same page?

A Yes.

MR. SHENIER: I offer Defendant's Exhibit BR in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit BR received in evidence.)

Q When did you say you first started business, Mrs. Neumann, using Vera on scarves?

A In '45.

Q Perhaps I can correct your recollection if I show you your registration --

MR. O'HARA: Your Honor, I object to the form of the question. It presupposes, "Perhaps I can correct you".

THE COURT: Objection sustained.

Q I show you registration 896,548 which is registration on the print register of the trademark Vera, Scarves by Vera, and ask you if that's your signature?

A Yes.

Q What is the date you first have given?

A You mean the date up?

Q The date of first use in interstate commerce.

A Oh, '47.

MR. O'HARA: I object to the form of the question, your Honor, as the exhibit is not in evidence.

MR. SHENIER: I believe it is in evidence.

THE COURT: What is the item that you are showing

* * *

MR. O'HARA: I apologize for that, your Honor.

Q You are familiar with haute couturier?

A Yes.

Q Do you know of any haute couturiers that make linens?

A I think you said i-e-r.

Q No, couturiere is feminine, couturier is masculine.

A I see.

Q Do you know any high fashion outfits that make linen?

A Yes, Bill Blass does now and Gloria Vanderbilt.

Q Are they haute couturier designers?

A Yes.

Q Any others?

A Quite a few. Pucci.

Q Linens?

A Yes, linen sheets.

Q That is a fairly recent innovation?

A Yes.

MR. SHENIER: That is all I have.

MR. O'HARA: No further questions, your Honor.

THE COURT: I thought you made a distinction between linens and sheets. Are they used interchangeably?

THE WITNESS: Yes.

THE COURT: You said Burlington Mills licenses them to do sheets?

THE WITNESS: They call them bed sheets.

THE COURT: I associate linens with sheets. You used it earlier separately and when now talking about Pucci you used it interchangeably. Which is it?

THE WITNESS: Anything for the home I guess is called linens. Actually the linens aren't linens. Place mats and napkins, and table cloths, and aprons.

THE COURT: That would be linens in your line?

THE WITNESS: Yes.

THE COURT: All right. No further questions.

(Witness excused.)

MR. O'HARA: Plaintiff rests.

V E R A V O N E U L , called as a witness, having first duly been sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. SHENIER:

Q Mrs. Von Eul, what is your business?

A I am a custom dressmaker.

Q Would you consider yourself haute couturier?

A Very much so.

Q Would you name some of the women for whom you have

made clothes?

A I am so long in business I will mention several. Harriet Van Horn, Jacquelin Susan, Rachel Haywood, Ingrid Bergman. Wait a minute, I am trying to remember all. I don't remember them all, but I have a gallery hanging there. Wait a minute. Late Jannette MacDonald, Kay Francis. Oh, I don't remember all of them, but about these ones I know.

Q What is the price range for which the garments are sold?

A My cheapest dress or garment starts at 175 up to fifteen hundred dollars if I can get the customers for that.

Q I show you a letterhead which I have identified as Defendant's Exhibit FP and ask you if you recognize that.

A Yes, it is mine.

MR. SHENIER: I offer Defendant's Exhibit FP in evidence.

MR. O'HARA: No objection.

xx (Defendant's Exhibit FP received in evidence.)

Q I show you an envelope which has been identified as Defendant's Exhibit FQ.

A Yes, that is mine.

MR. O'HARA: No objection.

MR. SHENIER: I offer it in evidence.

xx (Defendant's Exhibit FQ received in evidence.)

Q I show you a card marked Vera Custom Fashion, 25 East 77th Street, which has been identified as Defendant's Exhibit FR and ask you if you recognize that.

A I do.

MR. O'HARA: No objection..

MR. SHENIER: I offer it.

(Defendant's Exhibit FR received in evidence.)

Q I show you some labels showing a picture of a woman marked for identification as Defendant's Exhibit FS.

A Mine too.

MR. SHENIER: I offer it.

MR. O'HARA: No objection.

xx (Defendant's Exhibit FS received in evidence.)

Q How long have you been in business?

A 32 years.

Q Since when?

A December 1942.

Q You have been in business continuously?

A Yes.

Q Under the name Vera Custom Fashions?

A Yes.

Q Would you consider anyone who made linens haute couturier?

A Of course not.

MR. O'HARA: I object to the form of the question.

THE COURT: What difference does it make what the witness considers haute couturier?

MR. SHENIER: If it has any effect on you I don't want to put it in.

THE COURT: I have no question about it.

MR. SHENIER: All right, your Honor. I just wanted to get the evidence in that haute couture is one thing and mass production is quite another.

THE COURT: You have the right to put it in, but you are not getting any help with that kind of question.

MR. SHENIER: Thank you, your Honor.

Q During the time you have been in business have you ever received any complaint?

A About what?

Q About anything named Vera?

A Yes, I did. Three or four times a day.

Q Those are complaints in connection with what?

A Well, they mixed my telephone number with Vera Scarves and they complained about dresses having been sent to me by mistake. They thought I was the Vera what make the dresses and bath towels. People called up.

Q And complained?

A Yes.

Q And what do you say when you get these complaints?

A That they have the wrong number and the wrong Vera.

MR. O'HARA: I object to what she says.

Q And you have been conducting business activity up to the present time?

A Every day,and every morning,and every year.

MR. SHENIER: No further questions of this witness.

CROSS EXAMINATION

BY MR. O'HARA:

Q Mrs. Von Eul, where do you live?

A My private or my business?

Q No, where do you live, where do you reside?

A 25 East 77th Street.

Q And that is where you have your business?

A No, that is only my business.

Q Where do you reside?

A 100 Central Park South.

Q And 25 East 77th Street; is that the address of the Hyde Park Hotel?

A Yes.

Q On what floor are you located there?

A Third floor.

Q 308?

A 305.

Q Mrs. Von Eul, have you ever advertised?

A No, never.

Q How many employees do you have?

A Right now, three.

Q Are these garments that you say that you make made on the premises of 25 East 77th Street?

A Yes.

Q And are they made to special order?

A Only special order.

Q And none of the garments that you make are sold in stores?

A No.

Q Mrs. Von Eul, how are you listed in the phone book?

A Vera Custom Fashion.

Q Are you listed under the designation Vera Custom Fashion?

A Yes.

Q Are you also listed, do you know, under the name Von Eul?

A In the red book.

Q Is that the same address or your residence address?

A The same address.

Q The exhibits that were previously marked, the labels particularly, do you know the labels that you put in your

* * *

(Witness excused.)

THE COURT: Call your next witness.

MR. SHENIER: I would like to continue with Mr. Fernandez whose testimony has been interrupted.

A L F R E D O B . F E R N A N D E Z , previously sworn, resumed testifying.

COURT CLERK: You are still under oath, Mr. Fernandez.

THE WITNESS: Yes.

CROSS EXAMINATION CONTINUED

BY MR. O'HARA:

Q Mr. Fernandez, approximately what are the gross sales of the defendant Todo of products made by Vera or bearing the Vera trademark, annual sales?

A I can't answer that accurately now. I don't have the figures. I can give it approximately.

Q Yes, approximately.

A About 60,000. I'm sorry, over a hundred thousand.

Q Is the figure you are giving me the wholesale price, or is that the price it would be at retail?

A That is the net price of the sales.

Q Net to you?

A Yes.

Q That is the wholesale price, right?

A Correct.

Q What would the markup be? In other words, you have a suggested retail price.

A That is right.

Q And how much more is that then the price that you charge?

A Usually 40 and 10 per cent.

Q What sales area does Todo sell in?

A About 300,000.

Q No, I mean what geographic area?

A I'm sorry. The metropolitan areas, Philadelphia, Connecticut, Chicago and California, Los Angeles, San Francisco, and Miami.

Q Has your trading area been recently extended?

A Yes.

Q And when did that happen?

A Last year.

Q That was since the institution of this litigation; is that correct?

A Yes.

Q Prior to the time that you became associated with the defendant Todo --

THE COURT: What was the area before?

Q The area prior to that was the metropolitan area

and your contract provided for sales in New York only; is that correct?

A Yes, but it didn't say that we wouldn't be able to sell in other parts of the country.

THE COURT: Before last year you only sold in New York; is that what you are saying?

THE WITNESS: No, Connecticut, and Philadelphia, and Chicago.

THE COURT: Since that time you branched out into Los Angeles, Miami, and San Francisco?

THE WITNESS: Yes.

Q Prior to the time you were employed by the defendant Todo by whom were you employed?

A By Mr. Leonard Rubin.

Q In what type of activity?

A Salesman and assistant to the vice president.

Q What kind of products were you concerned with, merchandise? What was the name of the company prior to Todo?

A Sorry, I didn't understand that. Prior to Todo?

Q Yes.

A No, I worked by myself.

Q You worked by yourself; is that correct?

A By myself.

Q In what area of work was that?

A Toiletries and general merchandise.

Q Were you acting as a salesman?

A Yes.

Q And what type of accounts were you selling?

A To Spanish speaking accounts.

Q And when you commenced your employment with Todo were you concerned with the same accounts that you had sold previously by yourself?

A Yes.

Q Had you previously been engaged in large part in the sale of stress merchandise?

A Yes.

Q When you first became connected with Vera was that at its inception in '68 or '69?

A Pardon me?

Q Have you been associated with Todo -- I'm sorry -- since its inception in '68 or '69?

A '68.

Q '68?

A October, '68.

Q Are you a stockholder?

A No.

Q At the time that you became connected with Todo, had you ever heard of Vera in association with scarves?

* * *

MR. O'HARA: I have no further questions.

MR. SHENIER: No further redirect, your Honor.

THE COURT: All right, thank you very much.

(Witness excused.)

MR. SHENIER: I call Mr. Acosta.

M I G U E L A C O S T A , called as a witness, having first been duly sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. SHENIER:

Q Mr. Acosta, where do you live?

A In Barcelona, Spain.

Q What are you doing in the United States?

A To testify here.

Q You came from Spain to testify in this trial. By whom are you employed?

A Excuse me, sir?

Q By whom are you employed?

A By Vera perfumeria cosmetics.

MR. SHENIER: For the sake of shortness we will call it Vera Perfumery.

Q Your company is the supplier of Vera products, the total imports of the defendant here?

A Yes.

Q Your position with Vera is what?

A In Vera I am export manager.

Q Are you also a member of the bar of Spain?

A Yes, sir.

Q And do you teach, are you a professor at a post graduate school in Spain?

A Yes, sir.

Q What do you teach?

A Export trade.

THE COURT: What do you teach, sir?

THE WITNESS: Export trade.

Q At my request did you go through the archives of Vera Perfumeria?

A Excuse me?

Q At my request did you go through the archives, the records, of Vera Perfumeria in Barcelona?

A The person in charge of it.

Q You are?

A Yes.

Q You are in charge of the records?

A Yes.

Q But I said at my request did you go through the records of which you are in charge? Did you produce certain papers from the records at my request?

A Yes, sir.

Q I show an envelope marked Grupo, Macy and May, Archivo, 1962, and ask you if you recognize that envelope.

A Yes, I recognize it.

Q Where did that envelope come from?

A From the files of Vera.

Q I show you a paper, a copy of which has been identified as Defendant's Exhibit BD dated 8 November 1962 on the letterhead of R. H. Macy's and the May Department Stores and ask you if you recognize that paper.

A This is the order and the other documents I don't know.

Q Just a minute, one thing at a time. Do you recognize that paper? What is the answer?

A An order from May Department --

Q Do you recognize it?

A Yes, I recognize it.

Q That is all, thank you.

MR. SHENIER: I offer the paper, a copy of the paper identified by the witness as Defendant's Exhibit BD in evidence.

MR. O'HARA: I object to it on the ground, your Honor, that it is irrelevant. There is no indication that any trademark appeared on the goods which are the subject of the order and it could have no materiality to the issues here.

MR. SHENIER: We will tie the order in with other products of Vera in the same envelope.

THE COURT: Try to tie it up before. I am not going to admit it now.

MR. SHENIER: All right, we will tie it up, your Honor.

Q I now show the witness a paper marked for identification BD Sub 1 and ask the witness if he recognizes that paper.

A Yes, I recognize it.

Q Will you tell the Court what the paper is?

A From the Spanish Customs to this embarkment, a certification.

MR. SHENIER: I identified a copy of that paper as Defendant's Exhibit BD-1.

Q I show you a paper taken out of the same envelope dated December 26, 1962 and ask you if you can identify that paper.

A I recognize it.

Q Will you tell the Court what that paper is?

A The order from May on the instruction for embarkment.

Q For Siglo de Oro, 72 boxes and Ventolera, 72 boxes; is that correct?

MR. SHENIER: There is on the record, your Honor, Ventolera and Siglo de Oro exhibits which have the Vera trade-

mark on it.

Q I show you now Defendant's Exhibit for identification BP and ask you if that is the way Siglo de Oro is marked.

A I recognize it.

MR. O'HARA: There is nothing related on that one to the one that was shipped, your Honor.

Q Under the law of Spain what is the requirement in respect of the maker of the product?

A Well, we are obliged to put also in the article the name of the manufacturer.

Q The name of the manufacturer. And this Exhibit BP, Vera is what?

A The name of the manufacturer.

Q Siglo de Oro which was shipped, would that have the name of the manufacturer on it, Vera?

A Yes, this is Siglo de Oro also marked with Vera.

Q Are you also familiar with the requirement of U.S. Customs in respect of admission of products from foreign countries?

A It is necessary to mark always the name of the manufacturer.

Q As well as made in Spain?

A Yes.

Q Before it could be imported into the United States?

A Yes.

Q And Vera was the name of the manufacturer?

A Vera is the name of the manufacturer.

Q And these products that were shipped in Exhibit BD Sub 2, BD-1 and BD all had Vera's name on as the manufacturer?

A Yes, always, all our products.

Q All your products are always manufactured -- under the Spanish law you must put the name Vera on it?

A We are obliged.

Q You are obliged to.

MR. SHENIER: I now offer Exhibits BD, BD-1 and BD-2 in evidence.

MR. O'HARA: Your Honor, I object. The articles were shipped under two other trademarks and not under the trademark Vera.

THE COURT: Is this in evidence?

MR. SHENIER: I am going to offer it, your Honor.

THE COURT: Show it to Mr. O'Hara.

MR. O'HARA: I have seen this exhibit, your Honor. The witness has identified that as a label that is used on products, I believe.

THE COURT: Which of these items on BD and BD-2 are supposed to be part of Vera's product?

MR. SHENIER: Both Ventolera and --

THE COURT: Which ones are you talking about?

MR. SHENIER: Exhibit BD which follows the order.

THE COURT: BD?

MR. SHENIER: Yes, sir.

THE COURT: The only BD I have is R. H. Macy.

MR. SHENIER: That is the initiator. That is the order. Then they have to get permission from the customer?

THE COURT: What on BD are you indicating is the Vera name? There are three items there.

MR. SHENIER: On BD, sir?

THE COURT: On BD.

Q Will you translate BD for the Court?

THE COURT: Is this an order --

MR. SHENIER: It is an order from Macy to Spain.

THE WITNESS: It is an order from Macy, sir. The address --

THE COURT: The order from Macy to ship to Kaufman's Department Store in Pittsburg?

THE WITNESS: Right.

THE COURT: Certain of the Vera products. Is that what this is supposed to be?

THE WITNESS: I don't understand you, sir. It is difficult for me.

THE COURT: Yes, I know, and for me, too. This pur-

ports to be an order for your company to ship to Kaufman in Pittsburg.

THE WITNESS: That's right.

MR. SHENIER: If you look at the original document it probably will be better. These are the originals you took from the files. Those are copies.

THE WITNESS: It is the certification of the Spanish Customs.

THE COURT: What does this purport to be, --

MR. SHENIER: That is the bill of lading to Ventolera. This is in evidence, your Honor, as Exhibit AD-1; Ventolera and Siglo de Oro. That is the signature of Spanish Customs to ship it.

THE WITNESS: Certificate from Spanish Customs.

THE COURT: What is your objection?

MR. O'HARA: My objection is, your Honor, is that all that shows is there has been an order for goods under two other trademarks. Whether or not the name of the manufacturer of the goods had to appear someplace, it is perfectly obvious that the goods are ordered by and whatever the trademarks are on there, and they are not the trademarks we are concerned with in this case.

THE COURT: In each instance it appears to me that the consignee appears to be dealing with a company called Vera

Products, Producto Vera.

MR. O'HARA: There isn't any question where they emanated from. Whether or not, however, that is simply a name and address in connection with the products or a trademark use, it indicates two other trademarks.

THE COURT: The objection is overruled.

(Defendant's Exhibits BD, BD-1, BD-2, and B-7 received in evidence.)

THE COURT: I assume if you are going to have any extended examination I think it would be much better for you, for him, the court reporter, and for Mr. O'Hara if he has an interpreter.

MR. SHENIER: Well, your Honor --

THE COURT: Have you an interpreter?

MR. SHENIER: Yes, I have, but she is going to be a witness, too.

THE COURT: It is up to Mr. O'Hara. I don't care.

MR. O'HARA: Your Honor, I believe the person being called is related directly to -- it is not an outside witness who also sells products and so forth.

THE COURT: I am having difficulty understanding Mr Acosta and he is having difficulty understanding me. It makes it very difficult. Let's see how we can go.

Q Will you speak more slowly and I will speak more

slowly and perhaps we will make better progress.

A I will do my best.

Q Mr. Acosta, I now show you a paper which has been marked for identification as BD-3. Will you read the -- translate the document? It is on the letterhead of R. H. Macy, May Department Stores Company, and it is addressed to Vera, Barcelona, Spain.

A Well, this is the letter --

Q Speak slowly.

THE COURT: We are getting an interpreter coming up right away. I think it will be much easier for you and for the rest of us.

I think it will be better for us to wait until she arrives. We will take a recess until the interpreter gets here.

(Recess.)

S Y L V I A A G U I L A R , Spanish Interpreter, was duly sworn to faithfully and impartially interpret

M I G U E L A C O S T A , resumed testifying, through the Interpreter as follows:

Q Mr. Acosta, from here on out I will speak in Englis the interpreter will interpret into Spanish.

I show you Defendant's Exhibit BS-3 for identification and ask you if you can identify that.

A Yes.

Q Is that one of the papers which you brought from Spain?

A Yes.

Q Will you read the paper and have the Court -- translate it for the Court?

A "For the present I have the pleasure of sending the copy in the order above cited as such. When the merchandise is ready please advise us. We are awaiting your notice. Yours truly, J. R. L. Judd."

MR. SHENIER: I would like to mark this letter BD-3 for identification -- Defendant's Exhibit BD-3.

THE COURT: Didn't he just read that?

MR. SHENIER: Is that the one?

COURT CLERK: This is the one you just read.

MR. SHENIER: I am confused, not that one. I have so many here.

The next one is a letter again on the letterhead of R.H. Macy and May Department Stores dated 16 November 1962, a later date.

Q I ask the witness if you can identify that letter.

A Yes.

Q Will you tell the Court whether that is one of the papers you brought from Spain?

A Yes.

Q Will you read -- translate the letter?

A "For the present we have the pleasure to let you know that we have finished opening our office in Madrid dedicated to the assortment of our buyers in New York and the Spanish market. The person writing this letter will go to Barcelona the next -- the following week with the intention of introducing our organization to various manufacturers and see the type of merchandise which they fabricate. We believe that the article which you fabricate would be of interest to us. We would greatly appreciate that we have an interview with you so that we can discuss the possibility of business with us in approximately the year 1963.

"Waiting that the following Thursday in the afternoon can be a convenient date and personally we can come together. Yours truly, Juan Judd."

MR. SHENIER: This is addressed to Producto Vera. I offer the letter.

MR. O'HARA: I object to it on the ground of relevance, your Honor.

THE COURT: This is a letter from Juan Judd in offices in Madrid?

THE WITNESS: No, this is a letter from here announcing that we are opening an office in Madrid.

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THE COURT: This is the letter then from somebody in R. H. Macy & Company?

THE WITNESS: Yes, sir.

THE COURT: Announcing that R. H. Macy is opening a Madrid office?

THE WITNESS: That's right.

THE COURT: And that they would be interested in seeing what your line of products is?

THE WITNESS: That's right.

THE COURT: All right. I will accept it.

(Defendant's Exhibit BD-3 received in evidence.)

THE COURT: Mr. Acosta, I hand you BD. Where does that come from?

THE WITNESS: Out of Vera files.

THE COURT: No, I am sorry. Does that letter come to you from New York or does that letter come to you from Madrid?

THE WITNESS: From New York.

THE COURT: All right.

MR. SHENIER: Off the record, your Honor, after the first order Macy started a buying office in Madrid to buy Spanish products and that was announcing that buying office. At first they didn't have an office in Madrid. They bought it directly from the United States and then they opened a buying

office. That is what the second letter is. Macy opened a buying office in Madrid.

THE COURT: Mr. Shenier, I think in my questioning of the witness we have established that.

MR. SHENIER: Yes. Thank you, your Honor, I'm sorry.

Q I show you a paper and ask you if that's something you brought with you from Spain.

A Yes.

Q It is marked for identification BD-4. Will you tell the Court what BD-4 is?

A The order that was announced in the letter.

Q This is the order from Madrid for what, for what products?

A This is not from Madrid. This is from Kaufmann's, Pittsburg.

Q And for what products?

A Siglo de Oro and Ventolera.

MR. SHENIER: That should be with the first group, I got that wrong. Thank you.

I offer BD-4 in evidence.

MR. O'HARA: Were those shown to us previously?

MR. SHENIER: I didn't have them. They came from Spain.

MR. O'HARA: The same objection, your Honor. It

relates to different products under different marks.

THE COURT: All right, received.

(Defendant's Exhibit BD-4 received in evidence.)

Q I show you a copy of a letter marked for identification, Defendant's Exhibit BD-6 and ask you if that is the letter, the original of which I hold in my hand, that you brought from Spain.

A Yes, sir.

MR. O'HARA: Who is marking these for identification, your Honor?

MR. SHENIER: I am.

MR. O'HARA: You are?

MR. SHENIER: Yes.

MR. O'HARA: Because this is not marked by the Court Clerk for identification. You marked these; is that right?

MR. SHENIER: I marked all these exhibits at the request of the Court Clerk. We marked them all and showed them to the Court Clerk except these. These I didn't mark because I didn't have them.

MR. O'HARA: You just marked them for identification yourself; is that correct?

MR. SHENIER: Yes.

MR. O'HARA: I was unclear as to that.

MR. SHENIER: I followed the sequence of marking so

there wouldn't be a duplication of numbers.

MR. O'HARA: The witness having been brought from Spain means nothing. If he wishes to ask if they came from the files would be more proper than asking if they just came from Spain.

THE COURT: If you want to object, object.

Q Were these taken from the archives of Vera Perfumery of which you had custody?

A Yes, all of these letters have been brought from Spain.

MR. SHENIER: I identified to start with as a folder marked Archivo.

Q Would you translate --

THE COURT: Before he does that. Let me see that.

The only problem I have seems to be the signature. This is a 1962 letter and apparently is an agent of the representative in Spain, as far as I can see; is that correct?

THE WITNESS: Yes.

THE COURT: What is the point of your giving us a lot of letters in 1962 in October about Macy's stores? We have already got it in evidence. You established the fact, unless you are going to show one letter shows he had an order that went to Kaufmann's in Pittsburg. Another shows that Macy's advised him they are opening an office in Madrid, and apparently

that he sold some of these items to Macy's Department Store at some point in 1962. Why do you keep just giving us Macy's? The point is I think that is established.

MR. SHENIER: I want to show a continuous dealing, your Honor.

THE COURT: You are not showing a continuous dealing. This is the 26th of October, 1962. The other letters range from here until about the 16th of November, 1962.

MR. SHENIER: We will go on to show different products, different shipments, and continuous dealings.

THE COURT: What were the products that you were being asked about in that letter?

THE WITNESS: Siglo de Oro and Ventolera.

THE COURT: For distribution and sale from whom and to where?

THE WITNESS: This is the representative of Macy's. It is not for here, it is for Europe, in this case.

THE COURT: All right. That doesn't --

MR. O'HARA: I am not sure I heard the answer.

THE COURT: The representative of Macy's and these were the sales of their products through Macy's overseas in Europe, not in the United States.

MR. O'HARA: You mean the goods aren't to be sold in the United States?

THE COURT: Those goods covering that exhibit. Let's take a luncheon recess until two o'clock.

(Recess.)

AFTERNOON SESSION: 10/22/74
2:00 o'clock p.m.

(Miguel Acosta, resumed.)

DIRECT EXAMINATION CONTINUED

BY MR. SHENIER:

Q Mr. Acosta, I hand you a copy of bill of lading on American Export Line to New York from Spain and ask you if you removed that bill of lading from the archives of Vera Perfumery?

A Yes.

Q Would you tell the Court what the bill of lading shows?

MR. O'HARA: I object to that, your Honor. If he wants to introduce it in evidence, I think the bill of lading speaks for itself, if he wants to translate it, but if he asks the witness what it shows it is a different story.

THE COURT: He is absolutely right. The man can't testify about a document not in evidence.

MR. SHENIER: All right. I introduce bill of lading as Defendant's Exhibit BF in evidence.

MR. O'HARA: Your Honor, I object to this document on the same grounds that I objected to the other, that it shows a shipment of goods from a company called Producto Vera but under a different trademark. Therefore, I object to it on the grounds that it is not relevant to the issues in this case.

I might add that during the adjournment I examined the other documents that Mr. Shenier intends to introduce, and rather than interrupt I would like a continuing objection to all of the documents on the same grounds, your Honor, because they are all the same.

THE COURT: You better have it explained.

Q The bill of lading, Jabon de Tacador. What is that?

A Is this what you are asking me, what does it say?

Q No, what is Jabon de Tacador?

A Toilet soap.

Q How is that marked?

A Vera.

MR. SHENIER: I think our exhibits in evidence show Jabon de Tacador with Vera on it.

THE COURT: I thought we were talking about perfume. I never heard of this before.

MR. SHENIER: They have perfumes, colognes, toilet soaps,and lipstick, and cosmetics. Exhibit AK, your Honor, in evidence.

THE COURT: That has been admitted?

MR. SHENIER: Yes, your Honor.

THE COURT: Who identified it?

MR. SHENIER: It was identified under --

THE COURT: I am not aware of it.

MR. O'HARA: It is in evidence, your Honor. It was a whole leaflet that came in.

Your Honor, may I add to my objection? As I understand it, this gentleman has only been with the company six years so has no personal knowledge of what was contained in that shipment other than what appears on that document, and there is nothing on that document which indicates any trademark use of the word "Vera". It simply has a shipping manufacturer, which he says is required by law.

The document which your Honor is now examining is a much more recent document than 1962 or '63, the vintage that we are dealing with. The years '62, '63 the witness has no personal knowledge of other than the documents from the archives.

THE COURT: Ventolera I have seen before and this booklet I have seen before.

MR. O'HARA: That is the generic description on the bill of lading your Honor. That is the Spanish for soap. It is not a mark, it is not anything. It is just a generic term which means soap. And the translation appears underneath it in English.

THE COURT: All right, I will let it in.

(Defendant's Exhibit BH received in evidence.)

xx

Q I hand you a copy of a paper marked Defendant's

Exhibit BE. I ask you to tell the Court what that is.

A Copy of the invoice.

Q That was taken from the archives of Vera in Spain?

A Yes.

MR. SHENIER: I offer Exhibit BE in evidence.

MR. O'HARA: I have a continuing objection again, your Honor. It deals with either generic terms or specifically marks other than those which are at issue in this case.

THE COURT: You don't have to make that objection all the time.

MR. O'HARA: All right, your Honor. I won't make it again.

THE COURT: Is this a copy? What does this purport to be?

MR. SHENIER: That is a copy of an invoice taken from their files of a shipment to Kaufmann's of Siglo de Oro soap, so many cases. We follow that up with export license and then a payment.

MR. O'HARA: Excuse me, your Honor. I stipulated he might use copies rather than original documents on the theory he might take them with him.

THE COURT: I understand, all right.

MR. SHENIER: I offer Exhibit BE in evidence.

(Defendant's Exhibit BE received in evidence.)

xx

Q I hand you an original of a paper marked Defendant's Exhibit BD-7 and ask you to identify that exhibit.

A Yes.

Q What is it?

A Export license -- official export license of Spain.

Q To what country?

A United States.

MR. SHENIER: I offer Exhibit BD-7 in evidence.

THE COURT: I don't understand what you are trying to do.

MR. SHENIER: I am showing a continuous export. This is 1963 now. I have got '62, 63. I am going to '64.

THE COURT: Where is '63?

MR. SHENIER: I guess this is a note in '62. Give the original to the Judge and hold it up to the light. This is '62, I'm sorry. It is perforated.

THE COURT: That is '62. You are just cluttering the record. You don't need an export license in '62. You have to have evidence that he shipped some items to Kaufmann in 1962. What is the export license going to help me with now? The license is dated November 1962.

MR. SHENIER: And then I have the shipment in January '63 following that.

THE COURT: Show him the shipment. You don't need

the license.

MR. SHENIER: May I offer this in evidence?

THE COURT: What is that?

MR. SHENIER: The --

THE COURT: No, you are just cluttering the record.

Q I hand the witness a letter dated January 14th, identified as Defendant's Exhibit BG. I ask the witness to identify that paper.

A It has been taken from the archives.

Q What is it?

A This is a letter stating the check in the amount of $136.44 for payment of the shipment.

THE COURT: What amount?

THE WITNESS: $136.44 as payment for a shipment.

THE COURT: Where did this come from? Where did the letter come from?

THE WITNESS: From a representative in Madrid.

THE COURT: All right.

xx (Defendant's Exhibit BG received in evidence.)

Q I show you, the witness, an envelope dated in 1963 and ask him where that envelope came from.

A From the archives of Vera.

Q I show the witness, Mr. Acosta, Defendant's Exhibit BH-4, BH-5, BH-6, and BH, BH-1 --

MR. O'HARA: None of these have been marked by the clerk, your Honor. I think maybe we should have these marked for identification.

MR. SHENIER: They are marked for identification.

MR. O'HARA: By you, is that right, or has the Clerk marked them? I don't know quite how this is done.

THE COURT: What he has done is premarked them.

MR. O'HARA: No, all of ours were premarked by the Clerk.

THE COURT: As long as the markings are in order it is all right.

(Defendant's Exhibits BH, BH-1, BH-3 and BH-4 marked for identification.)

xx

Q I ask the witness to identify these exhibits.

A BH is the copy of the invoice to Max Abram's, 42nd Street, 10003, U.S., New York.

BH-1 is a list, a packing list.

BH-4 is also a copy of packing.

And BH-3 is a copy of the export license for this operation.

MR. SHENIER: I offer BH, BH-1, BH-3 and BH-4 in evidence.

THE COURT: Would you tell me what those various columns mean?

THE WITNESS: Quantity, unit price, name, amount.

THE COURT: What does import mean?

THE WITNESS: That is the amount.

THE COURT: Quandita is what?

THE WITNESS: Quantity.

THE COURT: What is it -- the first name is the quantity of what?

THE WITNESS: The first is the quantity containing four bars.

THE COURT: In other words, they contain four bars each?

THE WITNESS: Yes.

THE COURT: And then the price per unit is in Spanish Posedos?

THE WITNESS: Yes.

(Defendant's Exhibits BH, BH-1, BH-3 and BH-4 received in evidence.)

xx Q I hand the witness a series of papers marked BL, BL-1, BL-2, and ask the witness if he can identify those papers.

A BL is a copy of the invoice sent to Starr 225 Incorporated.

THE COURT: When was that invoice sent?

THE WITNESS: 29 April 1966.

Q What is the next paper?

A BL-1 is another invoice of a shipment to Starr 225.

Q Is the address given?

A New York. BL-2 is the Spanish export license.

THE COURT: What is the amount in dollars on BL?

THE WITNESS: The total amount, $1,912.10.

THE COURT: What does one thousand eight hundred dollars and some odd cents mean?

THE WITNESS: This is a two per cent discount.

THE COURT: So that the total came to $1,873.86?

THE WITNESS: Yes.

(Defendant's Exhibits BL, BL-1, BL-2 received in evidence.)

xx

Q I hand the witness Exhibits BM and BN and ask you to identify.

A BM is a bill of lading. BN is a special Customs invoice for the United States.

THE COURT: This was in 1964 as well. What was the cost of that shipment?

THE WITNESS: $2,800.

THE COURT: All right.

MR. SHENIER: I offer the exhibits in evidence.

xx (Defendant's Exhibits BM and BN received in evidence.)

Q I show you, Mr. Acosta, exhibits I marked for identification BI-1, BI, BI-2, BJ and BK and ask you to identify

those exhibits.

A BK is a bill of lading of a consignment to New York, dated 25 April '64.

This is a --

Q What is "This"?

A BI.

Q And BI-2? This is BI-1 and that is BI?

A BI-1 is a stub of a check in the amount of $2,073.50.

BI is an invoice.

THE COURT: I am afraid I don't understand this. What is the identifying note on that check? What is that supposed to be?

MR. SHENIER: 2,073.60 in the invoice matches the stub on the check, your Honor. If you look at the total down here --

THE COURT: What difference does it make? I don't know where the check came from.

MR. SHENIER: It came from the archives.

THE COURT: I am not talking about that. That check isn't identifiable by me in looking at it as being any check which I can identify.

MR. SHENIER: That is a stub rider that goes with the check. The check has been cashed.

THE COURT: Of course, you are absolutely right, but

I can't identify the stub.

THE SHENIER: The amount happens to be the same, it comes from their archives and for whatever evidentiary value it has, it is evidence of the shipment.

THE COURT: It doesn't make any sense to me. I can't identify it here.

All right.

Q What is the next exhibit?

A BI-2 is a Spanish export license.

BJ is a list of contents.

Q Of what?

A Contents.

Q Contents? That corresponds to the export license?

A Yes, corresponds to export license.

MR. SHENIER: I offer Exhibits BI, BI-1, BI-2, BJ and BK in evidence.

THE COURT: All right.

(Defendant's Exhibits BJ, BK, BI, BI-1 and BI-2 received in evidence.)

Q I hand the witness the originals of what have been identified as Defendant's Exhibits FB, FC, FD, FE, FF, FG, FI, FJ, FK, FL, FM and a photograph.

THE COURT: There are two photographs.

Q And a photograph which is marked FA.

THE COURT: Give it back to him.

MR. SHENIER: This is a copy. He has the original. I want to give this to the Clerk.

Q I ask the witness to identify the exhibits so identified.

A FB is an announcement from General Secretary of the Industry of Barcelona announcing that there will be an exhibition of Spanish products in New York.

FB is a calendar of exhibitions which will take place in New York from the Chamber of the Spanish Industries.

MR. SHENIER: It leads up to the photograph.

A FC is our letter stating that we have received their letter.

Q "our" being what?

A This is our letter which we have written to the General Secretary of Chamber of Commerce.

Q What does "our" mean?

A Vera. It states that we are interested in taking part in the exhibition.

Q Next.

A This is in English.

A FF is a telegram stating that we wish to participate in the exhibition, getting in contact with a Mr. Alphonso -- rather to ask for permission to participate.

FD is a copy of the telegram stating that we have been given permission to participate.

Q All right, next.

A FI is a list of products to be in the exhibition and which are offered as samples.

Q Next.

A FK if our letter to the Minister of Commerce stating that we are going to go over and participate.

Q Next.

A FL is our letter stating that we have -- we are accepting their conditions to participate.

Q FM.

A FM is a telegram stating that we are making reservations at a hotel.

Q And FA?

A FA is a general picture of products we have exhibited of Vera.

MR. SHENIER: I would like to call the Court's attention and have it shown on the record the back of the photograph is "photographed by Earl M. Silver, 25 East 38th Street, New York 16, New York" and I would like the Court to see the original of the photograph, if you please, because there is Vera on it.

MR. O'HARA: Your Honor, I object to everything but

the photograph. In the photograph there is discernible the word "Vera" in at least one place and apparently this has been established as an exhibit through Starr to whom the Spanish manufacturer sold, and it appears there was an exposition shown on this picture in which Vera does appear. To that we cannot object. But I do object to the rest of the documents.

THE COURT: Where is this exhibition supposed to have taken place?

THE WITNESS: Here in New York. I don't know the right address. In New York, the Spanish --

THE COURT: Do you know where it was?

THE WITNESS: Official Chamber of Commerce has a permanent location here, 557 Madison Avenue, New York.

THE COURT: You already stated insofar as you are concerned that you are conceding, as I understand your statement, that an exhibition was held and there was a display of these products using the word Vera.

MR. O'HARA: Yes, your Honor, as indicated on the photograph in the City of New York, yes, your Honor, I am willing to concede this happened.

THE COURT: Sometime in 1964?

MR. O'HARA: Yes, your Honor.

THE COURT: With that, we don't need the exhibits. So the objection is sustained.

MR. O'HARA: I didn't object to the photograph, your Honor.

THE COURT: All right.

xx (Defendant's Exhibit FA received in evidence.

MR. SHENIER: That's all I have of this witness, your Honor.

CROSS EXAMINATION

BY MR. O'HARA:

Q Mr. Acosta, how long have you been employed by Vera Perfumery in Spain?

A Six years.

Q And then your knowledge with respect to the exhibits which you identified is limited to finding them in the files which were under your care and custody; is that correct?

INTERPRETER: I'm sorry, you will have to break up that question.

Q Your knowledge with respect to the exhibits you identified is limited to the fact you found them in the files of which you have charge?

A Yes.

Q You are an attorney or lawyer; is that correct?

A That's right.

Q And you know what a trademark is? Is that correct?

A That's right.

Q You conducted this search of the archives at Mr. Shenier's request; is that correct?

A I don't understand the question.

Q You produced these documents which you brought with you as a result of a search made at the request of Mr. Shenier?

A Yes, sir.

Q And did Mr. Shenier ask you to search for every document showing a sale of any products to the United States no matter where?

A Please repeat the question.

Q What did Mr. Shenier ask you to search for?

A To bring the documents which I could find in the files.

Q But specifically what documents were you asked to find?

A Old exportations.

Q May we have the period of time which you searched?

A I had to bring the old files, but I don't know which time.

Q Did you search for any records which are dated later than 1969?

A No.

Q And what you produced today was all of the records you could find pursuant to Mr. Shenier's request; is that

correct?

A Yes, in the old files.

MR. SHENIER: May it please the Court, to save time I only asked Dr.Acosta to bring records from 1964, from that time on to bring us up to date.

Q Mr. Acosta, I show you what has been marked in evidence as Defendant's Exhibit BL-1 and I direct your attention to certain portions which appear in parentheses. Do you see those?

A In parenthesis, yes.

Q What is the reference there that is in parentheses? What does that refer to?

A Toilet soap and cologne.

Q Then go down to the next line, please, and what does this refer to?

A Single bottle of cologne.

Q Siglo de Oro is only a single bottle?

A Single bottle.

Q What do the words Siglo de Oro signify to you?

A In what sense?

Q Well, is it a trademark?

A A trademark?

Q That is right.

A A fragrancy that we have. We have too many fragrancy --

Q Those are all trademarks; is that right?

A Yes.

Q Mr. Acosta, did you find any invoices which indicated a sale of any articles bearing the trademark Vera?

A These are all fragrances with different names, but which are all under the name Vera.

Q They were all made by the manufacturer Vera; is that correct?

A Yes.

Q Have you produced here any piece of paper wherein the mark Vera appears in parentheses as indicating a trademark?

A They are all products of Vera.

Q I understand that, sir, but you recognize Siglo de Oro and Ventolera as trademarks of Vera in Spain; is that right?

A Yes.

Q And your orders show orders for goods bearing those trademarks; is that correct?

A This name always accompanied by the name of Vera.

Q Show me where on the invoice or the order where you have the parentheses it relates to the word Vera.

A Not in parentheses, but always.

Q It is the manufacturer; is that correct?

A Right.

Q However, do you know underneath where the specific

orders are made they are ordered by trademark designations, are they not?

A I don't understand.

Q Are you familiar with the packaging of the products that your employer exports?

A Yes, I recognize all the products.

Q During the period of time that you have been with the company has there been a change in the packaging and design of the products exported?

A It is possible that new products have been brought or that have been modernized.

Q I show you Plaintiff's Exhibit 19-B for identification and ask you if you recognize that.

A Yes.

Q For how long do you recognize it in that package?

A I don't remember exactly. About three or four years. It had the same name but a different presentation.

Q A different presentation?

A Under the same name.

Q Was the name Vera featured before three years ago?

A Yes. Of course, in the product, except the product had a different form.

Q Was any other trademark, so far as you know, associated with this particular product at that time?

A With Vera.

Q Prior to three years ago -- this is a cologne, is that correct?

A Yes.

Q Prior to three years ago it appeared in a different form package?

A It was a different bottle with the same name.

Q I have a cake of soap, Plaintiff's Exhibit 19-V. Is that a new package?

A I think it is the same age as this in respect to the presentation.

Q I show you Plaintiff's Exhibit 11-D for identification and ask you if you recognize this packaging.

A Yes, I recognize it is the exterior packaging of the product.

Q How long has this particular type of packaging been in use to your knowledge?

A This package had been created about three or four years. We are always creating new packages.

Q Do you have any of the packaging that existed prior to this, or do you know of any where we could have it brought to court?

A Before what year?

Q The three or four years ago that the change occurred.

A More than I the distributors would know.

Q Did Mr. Shenier ask you to bring with you samples of any of the packaging on your exports of '62, '63, '64?

A Will you repeat the question?

Q Did Mr. Shenier ask you in your search to locate any of the packaging or actual products exported in '62, '63, '64?

A It is not necessary. The majority of them could be found in a warehouse or in the catalogues.

Q Were you asked to produce any of the older catalogues of the early sixties by Mr. Shenier?

A No.

MR. O'HARA: I have no further questions.

REDIRECT EXAMINATION

BY MR. SHENIER:

Q I show you, the witness, what has been identified as Defendant's Exhibit BC and ask him to identify the interior. Never mind the sworn translation inside.

A This is the registration -- the international registration of the trademark Vera in 1946, the first date.

MR. O'HARA: I object to the introduction of this exhibit, firstly on the grounds it is improper redirect, but more importantly on the grounds that the registration abroad has no relevancy whatsoever to trademark rights in the United States, and that it is only through use here that rights can

be created. And I would hand your Honor a one page memorandum with respect to the law on the subject.

MR. SHENIER: May it please the Court, we are not relying on that to create trademark rights in the United States. The cross examination of this witness questioned whether or not the products were marked with Vera made in Spain. We already have the testimony it is necessary to put Vera on all the products and there is the registration in Spain showing the use in 1948 and renewed again in 1968. So we are only putting this as evidence that the products in Spain were marked in Spain with Vera before they were exported, and we are not relying on that to create trademark rights in the United States. We are relying on the use in the United States as my learned brother well knows. I agree with him on that.

MR. O'HARA: Registration and the use are quite separate, and every document the witness identified called for a trademark other than Vera, and that is my point. And the registration in and of itself won't even evidence use there.

THE COURT: The objection is overruled. I think this does show in evidence that the mark Vera was registered in 1947 and reregistered in 1968. There isn't any mention of '67.

It was originally apparently registered, actually registered on the 11th of January, 1948, and it was renewed on the 14th of January, 1968, and the mark is registered to a

person called Martinez and the address has been identified here as the Producto Vera in Barcelona.

I think whether it was in use or not, it shows the mark was registered internationally since 1948. The objection is overruled. I will accept it.

xx (Defendant's Exhibit BC received in evidence.)

Q I ask you first Abelardo Vera Martinez, his surname is what?

THE COURT: That is not really important.

MR. SHENIER: I want to tie it up with the present. If you don't think it is important, I will skip it.

THE COURT: It was already in evidence. New York has enough contacts with Spanish customers to know that Vera is identified by the middle name.

Who is Mr. Martinez?

THE WITNESS: Abelardo Martinez, Vera is the family name of the father.

Q Who is he?

A The founder of Ventolera.

THE COURT: What connection does he have with the first part of the name?

A He is president of the business administration and the head stockholder.

THE COURT: All right. Proceed.

Anything else?

MR. SHENIER: I just want to introduce some of these other exhibits because Siglo do Oro and Vera are advertised together.

THE COURT: I think you have enough on the record on that. If you want some more you will put more evidence in. It is your case, not mine. The problem, of course, with some of that is that you are not really involved in redirect any more. You have gone again into the examination in chief.

MR. SHENIER: My learned brother cast doubt on the fact Siglo do Oro was marked with Vera and I want to bring out all of the products were marked with Vera. And he tried to bring out that Vera was a recent innovation.

THE COURT: Mr. Shenier, you are not proving anything by that. The only thing Mr. O'Hara indicated is he wanted to know about the packaging. Mr. Acosta talked about the packaging. You are not helping yourself by showing some recent posters. He raised a question as to whether you were doing this since 1962.

MR. SHENIER: No, she wasn't with the company in 1962. I have no further questions of this witness.

(Witness excused.)

S A R I T A F E L D C H T E I N , having first duly been

sworn by the court clerk, testified as follows:

DIRECT EXAMINATION

BY MR. SHENIER:

Q Mrs. Feldchtein, would you state your business?

A I have been importing Vera cosmetics, soaps and colognes since the latter part of 1964, the beginning of '65.

Q Under what style do you do business?

A I don't know what you mean by style.

Q What is your business called?

A My company name?

Q Yes, your company name.

A Vera Cosmetics.

Q I show you defendant's --

THE COURT: Since 1964 you have been an employee?

THE WITNESS: Right.

THE COURT: What is it called?

THE WITNESS: Vera Cosmetics.

Q I show you Defendant's Exhibit BR --

THE COURT: And where are you located?

A Cedarhurst, Long Island.

Q I show you Exhibit -- Defendant's Exhibit BR which is a Manhattan telephone directory and ask you if you are listed in that Manhattan telephone directory, and, if so, what the listing is.

A Yes, sir.

Q And --

A Vera Cosmetics Ltd., Cedarhurst, Long Island.

Q Did I visit your place of business sometime in the latter part of last year?

A Yes, sir.

Q Did I ask you to produce copies of various invoices at random from your files?

A Right.

Q Did you so produce such invoices?

A I did.

Q I hand you Exhibits DR, DS, DT, DV, DW, EX, EY, and EZ, bearing dates 1965, 1966, 1968, another one from 1968, December 1968, July 15, 1969, September 1970, July 1971, and January and February 1972, and ask you if those are the invoices which I removed from your files.

A Yes, you did.

Q I misspoke, Exhibit EU is not an invoice, but a delivery order. And this delivery order was likewise removed from your files?

A Right.

MR. SHENIER: I offer Exhibits EU through EZ in evidence.

MR. O'HARA: Your Honor, I have no objection to these

exhibits except insofar as it attempts to establish the use of the trademark Vera in contravention of the prior years being made by the plaintiff since the year 1945.

MR. SHENIER: There has been no evidence of any use by the plaintiff on cosmetics, perfumes, colognes, and toilet articles. Our position is that the plaintiff has its trademark for its own goods. We have a right to use our trademark on our goods. And there is no contravention here at all.

THE COURT: These are received in evidence. I don't think you have answered Mr. O'Hara's question he raised, and that is the use of the mark.

MR. SHENIER: I will come to that.

THE COURT: All right. We will take a ten minute recess.

(Recess.)

(Defendant's Exhibits ER through EZ received in evidence.)

Q I ask you to ascertain the aggregate dollar sales in the various years in which you have been selling Vera products in the United States.

A Yes.

Q Do you have any figures, and if so, will you give them to the Court year by year.

A I have it broken down.

Q May I have the breakdown?

A Yes.

Q I haven't seen these yet?

A No.

Q You made that memorandum from your files?

A Right, from my invoices.

Q Will you read to the Court what the sales figures are year by year in dollars?

MR. O'HARA: To save time I have no objection.

A 1965, $5,872.02.

"66, $4,357.00.

"68, $1,211.98.

"69, $5,765.90.

"70, $8,573.70.

"71, $12,433.61.

"72, $8,553.62.

I didn't get to do '63. I'm sorry.

THE COURT: You mean '73?

THE WITNESS: '73, I didn't get to do.

Q During the period that you have been importing and selling Vera products, did you ever come across a single product not bearing the name Vera?

A All of them have the name Vera.

Q In other words, all products were marked Vera?

A Right.

Q This cologne for men --

A Right.

Q -- the size of the package I understand has changed, but did the marking change in all the years?

A No. The packaging and the color of the package changed, not the name. It was always Vera alone.

Q An after shave lotion for men?

A After shave sold Vera, in that line.

Q The only identification on that package is Vera?

A Yes.

Q Is there any other product in which the sole identification is Vera besides the cologne?

A A soap.

Q The soap was identified solely by the name Vera?

A Vera soap.

Q How about lipstick?

A Vera lipstick.

Q No other identification except Vera?

A Vera on those.

Q When you say lavender --

A We have quite a few on Lavender 74 Vera, Lavender Vera. We identify the fragrance by a name in front. We have a Palmanova Vera identifying the fragrance.

Q What does that mean?

A It is a fragrance.

Q Identification for the fragrance?

A Yes.

Q And the trademark was still Vera?

A Right.

MR. O'HARA: Excuse me, your Honor. I object to the conclusion of what the trademark was. I object to that question and ask that the answer be stricken.

THE COURT: Well, the import from the testimony as I understand it was that the products were all sold with the name Vera used in some form, no matter what the product was called.

Q Lavender would be a scent?

A Yes.

Q It could be Yardley, but this was Vera's Lavender?

A Yes.

Q But Lavender was not a trademark?

A Not to my knowledge.

MR. SHENLER: I think the exhibits speak for themselves as to what was imported.

THE COURT: I don't see any point in going over the items.

Q These are merely samples and you have given us the aggregate volume dollar-wise sold?

A Yes.

Q Did you ever get a call from anybody wanting a Vera scarf?

A No, sir.

Q Or any other products with Vera other than your own products?

A No, sir.

MR. SHENIER: That is all.

CROSS EXAMINATION

BY MR. O'HARA:

Q Do you recognize the term Siglo de Oro?

A What do you mean by term?

Q Well, I mean those words. Do you recognize those words?

A Oh, yes.

Q Do they have any meaning to you?

A They certainly do.

Q What do they mean to you?

A It is one of the Vera lines.

Q Vera, you are speaking of the person, the firm from which you import in Spain, is that right?

A That's right.

Q You say it is one of their lines. Do you know or have you heard that they claim it as a trademark?

A Yes.

Q In connection with the exhibits that have previously been marked, all of the exhibits, samples of your importations, would you please examine them and tell me whether or not prior to 1969 there is any indication of the importation by you of a product which bore the words "Vera" or the word "Vera" on it?

A You said prior to '69, is that correct?

Q Yes.

A No, I don't see any.

Q Do you find any other indications of other words which you understand as a trademark claimed by the exporter?

A Are you referring to Siglo de Oro?

Q Yes, is there any Ventolera?

A Yes.

Q But there are no Veras as such prior to '69 in these samples which you brought; is that correct?

A Right.

Q How long have you been importing the men's cologne?

A If I am not mistaken, my first shipment was a men's cologne, too.

Q In '69?

A No, prior to that.

Q Prior to that?

A Yes. Men's cologne?

Q Yes.

A Prior to that?

Q Well, I have, for example, Exhibit ER and it shows cologna Siglo de Oro. Have I got it right in Spanish? Is that a cologne?

A Yes, it is.

Q That would indicate to you that that was a cologne bearing the trademark Siglo de Oro; is that right?

A Yes, sir.

Q When you said previously that it bore the mark Vera alone you weren't referring to that cologne, were you?

A No, sir.

Q And the name Vera it is your testimony appeared someplace on the package, however; is that right?

A Would you refer to something?

Q Your testimony is that the word Vera appeared somewhere on the package which had the trademark Siglo de Oro.

A Right.

Q When did you first hear of Vera as related to scarves?

A When did I first hear?

Q Yes, in your own experience, when did you first, if ever, hear of the term Vera and associate it with scarves?

A Are you referring to Vera Scarves?

Q Yes.

A About two, three years ago my daughter brought home a scarf.

Q And that was the first time that you --

A Correct.

Q Had you been aware of it before through advertising or any other way?

A No.

Q You had not?

A Right.

Q The figures that you gave us of sales, were those the prices you paid the exporter?

A In Spain.

Q In Spain. Those were not your resale prices?

A No.

Q I think you said that you did bueiness under the name of Vera Cosmetics; is that correct?

A Correct.

Q Is that the full name of your business?

A Vera Cosmetics, yes, sir.

Q Do you sometimes use the term Vera Cosmetics Ltd.?

A Yes, sir.

Q Is that a different concern or the same?

A That was a time when I had some associates in the

business.

Q Was that a corporation?

A Yes, it was, for a short while it was. It has been dissolved.

Q How many employees do you have?

A Myself.

Q And your place of business is located in Cedarhurst?

A Correct.

Q What is the nature of that place of business?

A It is my home.

Q How do you make your sales?

A Most of the time it has been right through a distributor where I wouldn't even see the merchandise.

Q In other words, you sell not to consumers, but to stores?

A Right. I cannot sell directly to the public.

Q You sell to stores. What kind of stores do you sell to?

A Drug stores, jewelry stores and distributors.

Q Any department stores that you know of?

A Once I sold Bloomingdale's a hundred bars of soap. I think it was in 1965 or '66.

Q Of course, when I am asking these questions I am only relating to that merchandise which you imported from Vera.

A Right.

Q We understand that?

A Right.

Q You may have sold others, I don't know.

A Right.

Q The term boutique has been referred to in the course of this trial, and you have been present; is that correct? You have been present while it has been referred to?

A I have been here.

Q Do you sell any boutiques that you know of?

A Boutiques? The reason I am taking that long to think about it, because I have a few accounts that their store is involved with a little clothing which would be referred to as boutiques, some musical records, some first aid items, so I really wouldn't call that store a boutique store.

Q But it does have some articles of clothing or other wear?

A Apparel.

Q Apparel; is that correct?

A Correct.

Q And some of the stores do not?

A Correct.

Q And in your business do you advertise?

A I did. I don't --

Q When?

A 1966. I must say this -- although I am not allowed to say it -- by the amount of purchases that I made and by the amount of the -- the size of my business it doesn't allow much advertisement. I spend a hundred dollars here or fifty dollars there, it is not impressive to anybody as far as -- we know that advertising runs into big monies, but what I did, I really wouldn't call that big advertising.

Q Where would that kind of advertisement be?

A It would be in a Spanish speaking paper, something equivalent to T.V. Guide in Spanish, something that my budget wouldn't be over burdened with.

MR. O'HARA: No further questions.

MR. SHENIER: No redirect, your Honor.

THE COURT: There is just one thing. You gave us some items on items which I understood constituted volumes of sales of these imported products and then in answer to questions of Mr. O'Hara you indicated that they were the volume of purchases.

THE WITNESS: Purchases.

THE COURT: All right.

(Witness excused.)

MR. SHENIER: What is your Honor's pleasure?

THE COURT: About what?

* * *

* * *



of foreign registration and apparent useage on this issue in this country.

There is some evidence that there has been, these items have been imported since 1962 in some various hospitals in the United States. As I recall the testimony I am not sure any of those were in New York. I don't have it handy, but there was some evidence of it being shipped to Pittsburg and St. Louis, Missouri, but I am not sure there has been any evidence of any shipments to New York.

You can satisfy me about that with the evidence.

What I am interested in knowing is whether it would have any effect on the problems we are faced with and the fact that during that period of time that apparently the plaintiff has not made any effort up to now to argue or seek the relief, although there has been no evidence that the plainciff was aware of the name. But those are probably the issues that I see that need exploration.

You argue -- and I suppose also that your argument, Mr. Shenier, is that the high fashion designers associate franchises with their products and I would like to know where you get that.

Plaintiff has not gone into the franchise field or cosmetics, and indeed the testimony shows at least temporarily you didn't do so. Since obviously it is very clear there can't

be a trademark in gross, the question is whether they are entitled to protection in an area which they have not gone into, and have no immediate plans to go into. I suppose finally my problem as I see the term Vera applied to clothes or cosmetics I would be under the impression that that is a strong rather than a weak mark, but I would like discussion on it.

All right. I guess that is all that we can do for now, gentlemen.

MR. SHENIER: Thank you, your Honor. Your observations are going to be very helpful.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

SCARVES BY VERA, INC.,

Plaintiff,

-against- 71 Civ. 3017

TODO IMPORTS, LTD. (INC.),

Defendant.

- - - - - - - - - - - - - - - - - - - - -x

A P P E A R A N C E S:

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CARTER, District Judge

This is an action for trademark infringement and unfair competition arising under the trademark laws of the United States, 15 U.S.C. §1051 et seq. The court's jurisdiction rests on 15 U.S.C. §1121 and 28 U.S.C. 1338.

Plaintiff was founded as a partnership in 1945 by Vera Neumann, the designer, her husband and a third party. Subsequently, the partnership was incorporated with Mrs. Neumann as president. Plaintiff from the outset adopted Mrs. Neumann's first name Vera as its trademark. The mark has been used continuously ever since on ladies' scarves, neckties, blouses, shawls and kerchiefs, and the mark in respect of these goods is covered by Registration 683,332 in the United States Patent Office. The mark also has been and is used on women's apparel, barbecue sets, including aprons and gloves, coveralls in the nature of smocks, outer dresses and sport shirts, outer shorts and trousers, dress pajamas, waist coats, shifts, dresses, playsuits, shirts, tennis tops, jumpsuits, sashes, mufflers, ponchos, hats, caps, hoods and table linens; that is, tablecloths, napkins, handtowels, kitchen aprons, dish towels, guest towels, pot holders, placemats and bath towels. The mark for these products is

covered by Registration 896,548 dated August 1, 1970. This registration covers use of the mark on women's scarves, neckties, blouses, shawls and kerchiefs which are also covered by Registration 683,332 cited above. The mark is used on sheets, pillowcases as well. The mark is Vera in script, and the mark first gained recognition and prominence in its use on women's scarves, which plaintiff describes as signature scarves.

At various times plaintiff has registered other marks no longer in use -- using Vera as part of the mark. Thus it has registered Veraline, Veracloth, Veramat, Veraterry, Veracrepe, Vera Inseparable, Verabout, and Verasheer. Of these, only Verasheer is in current use. Plaintiff has licensed Scovill Manufacturing Co. to use its designs and Vera mark on needlework; Burlington Industries to use its designs and mark on sheets, towels, pillowcases, bath mats, and quilted bedspreads; and Munro Products, Inc. to use the mark on luggage.

Over the years plaintiff has prospered and its gross sales rose from 13 million dollars in 1969 to over 21 million dollars in 1972, before falling to 18 million dollars in 1973, due in part apparently to a general economic downturn. Plaintiff spent considerable sums annually advertising and promoting its mark. The pattern is cooperative advertising, that is, plain-

tiff, its licensee and the retailer selling the product contribute to the advertising pool. Plaintiff since 1970 has spent roughly between 300 and 500 thousand dollars annually.

All the products sold under plaintiff's mark incorporate designs by Mrs. Neumann and are manufactured in Japan, Taiwan, Korea, Italy and the United States. The retail outlets for plaintiff's goods are specialty shops, department stores and boutiques and linens constitute a significant segment of plaintiff's sales.

Defendant is an importer. It imports the products in controversy which are toiletries manufactured in Barcelona, Spain. Alberto Vera Martinez is the owner of the Barcelona perfumeria which manufactures and exports the toilet articles. The mark Vera was first used in connection with these products in 1947, and it obtained International Registration 134,216 in 1962. Since that year these toilet articles have been imported into the United States continuously under the mark Vera. Defendant holds Registration 829,237 in the United States Patent Office for cologne and bath soap under the mark Siglo de Ora. The trademark specimen on file in the United States Patent Office shows Vera as being a part of this mark. Application for registration of the mark on nail lacquer, lipstick, face

powder, eye shadow, cologne, perfume, aftershave lotion, deodorant and toilet soap has been made. Sales in the United States of the products in question net the importer defendant approximately $100,000 annually. The defendant's customer and sales promotion is concentrated chiefly in Spanish-speaking communities. Outlets were limited to the west coast, New York, Connecticut and Philadelphia and Chicago. In 1973 it expanded to Miami and the west coast.

Plaintiff does not manufacture toiletries or fragrances. There was testimony of approaches on two occasions in the past to enter the field but nothing came of it. Plaintiff contends that the counters or areas where toiletries are sold in department stores, such as Gimbels, for example, which retails both plaintiff's and defendant's products, are in close proximity to the counter or areas where scarves are sold. Therefore, it is said there is a likely to be confusion as to the source of defendant's products. Plaintiff also contends that Mrs. Neumann is a well-known designer and that the name Vera is comparable to such well known and popular figures in fashion as Bill Blass, Chanel, Yves St. Laurent, Gucci, Emilio Pucci, Pierre Cardin, Hattie Carnegie, Nettie Rosenstein, Adele Simpson, Lanvin and Madeline de Roach. Except for Gucci, these

are high fashion coutouriers who are giving their names to a variety of toiletries and cosmetics. Plaintiff contends that this is the trend, and the likelihood of its entering the field is great.

This is an area where precedents are of more limited assistance than in any other field of judicial inquiry since "[p]rior decisions on different marks used under different circumstances are of little value in deciding a specific issue of likelihood of confusion," Jaquet-Girard, S.A. v. Girard Perrogaux & CIE, S.A., 423 F. 2d 1395 (CCPA 1970), and it is the likelihood of confusion that is determinative. Modular Cinemas of America, Inc. v. Mini Cinemas Corp., 348 F. Supp. 578 (S.D.N.Y. 1972). Defendant stresses the different style of the two marks. Plaintiff's mark Vera is in script, while defendant's Vera is in block letters. However, that is a minor distinction, and it is doubtful to me that a woman shopper who sees Vera in script in a scarf or bed linens and Vera in block letters on a toilet article is likely to be brought to the realization of the different source of the products by that factor alone.

But the degree of similarity between the two marks is only one of the many relevant factors that bear on a deter-

mination of a claim of infringement. The other factors are the strength of the mark, the proximity of the products, the likelihood that the prior users will bridge the gap, actual confusion, the defendant's good faith in adopting the mark in dispute, the quality of defendant's goods, the sophistication of the buyers of the two products, the seriousness of the harm an injunction would inflict on the defendant as against any insignificant benefit gained thereby by the plaintiff. See King Research, Inc. v. Shulton, Inc., 454 F. 2d 66 (2d Cir. 1972); Kiki Undies Corp. v. Promenade Hosiery Mills, Inc., 411 F. 2d 1097 (2d Cir. 1969), cert. denied, 396 U.S. 1054 (1970); Chandon Champagne Corp. v. San Marino Wine Corp., 335 F. 2d 531 (2d Cir. 1964); Triumph Hosiery Mills, Inc. v. Triumph International Corp., 308 F. 2d 196 (2d Cir. 1962); Polaroid Corp. v. Polarad Electronics Corp., 387 F. 2d 492 (2d Cir.) cert. denied, 368 U.S. 820 (1961). No single factor is determinative; all must be evaluated before a sound conclusion can be reached.

We start with the inescapable conclusion that the mark is weak. It is Mrs. Neumann's given name, and it is also the surname of the defendant-manufacturer in Barcelona. In

these respects it is a common given name and not unusual as a surname. As added evidence of its commonality, Vera is the registered mark or part thereof of a variety of products; Vera (139 640) for foods; Vera Smart (579,682) for women's full-fashion hosiery; Vera Stewart (658,909) for cosmetics; Vera Sharp (670,677) for cheeses; Medicamentie Vera (755,116) for a medical publication; Vera Bruz (638,831) for textile products; and Vera Horn (624,542) for women's wearing apparel. Indeed, some of these products seem far closer to plaintiff's products than do defendants. Again, the weakness of the mark, as demonstrated by these third-party registrations, is not determinative, because they do not control determination as to whether plaintiff's and defendant's marks are so similar that confusion, mistake or deception is likely to result. Clairol Inc. v. Roux Laboratories, Inc., 442 F.2d 980 (CCPA 1971). As to these third-parties, however, there has been no testimony of any confusion or likelihood thereof as between their products and plaintiff's goods. Again this factor is not critical in and of itself, but must be taken into account.

Of course, even weak marks which have acquired secondary

meaning are entitled to protection. Safeway Stores, Inc., v. Safeway Properties, Inc., 307 F. 2d 495, 499 (2d Cir. 1962). Because of association with a particular product or firm over a period of time, a word has come to stand in the minds of the public as a name or identification for that product. Jean Patou, Inc. v. Jacqueline Cochran, Inc., 201 F. Supp. 861 (S.D.N.Y. 1962). Plaintiff might argue that Vera has acquired such stature in respect of scarves. However, even if that dubious contention were to be conceded, it does not establish plaintiff's right to bar use of the mark in other fields since there is, of course, no right to a mark in gross. B&L Sales Associates v. H. Daroff & Sons, Inc., 421 F. 2d 352 (2d Cir. 1970).

The defendant adopted its mark in good faith. There is no evidence that by its use defendant intended to palm its products off as plaintiff's. Defendant has been using the mark in connection with its products in this country since 1962, and while plaintiff may not be barred by laches from the relief sought see Ederand & John Burke, Ltd. v. Bishop, 144 F. 2d 838, 839 (2d Cir. 1907), under the circumstances, that defendant has been importing toiletries into this country

with the mark Vera on them for some dozen years does help underscore the fact that both parties have been operating in their respective fields for a long time without knowledge of each other, a fact which further erodes any argument as to the likelihood of confusion.

Finally, I cannot give credence to plaintiff's principal argument that since Vera is a well-known figure in high fashion, it is to be anticipated that Vera will enter the cosmetics and fragrance field, as other coutouriers have done. Miss Neumann is chiefly engaged in textile designs. A great part of plaintiff's business is linens. She does not hold annual shows exhibiting new creations in fashion. While Miss Neumann is undoubtedly a highly regarded artist in her field, her field is not high fashion. The coutouriers who use their name on cosmetics and fragrances are well known, well established figures in high fashion. More than that, these people are already in the field of cosmetics and fragrances. I do not see likelihood of confusion between plaintiff's and defendant's products, see David Crystal, Inc. v. Helene Curtis Industries, 476 F.2d 1375 (CCPA 1973), and, therefore, see no valid reason

why defendant should be enjoined from using the surname of the manufacturer of its product on the toilet articles in question.

SO ORDERED.

Dated: New York, New York
July 9, 1975

s/ Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK




SCARVES BY VERA, INC.,

Plaintiff,

v.

TODO IMPORTS, LTD. (INC.),

Defendant.

Civil Action

No. 71 CIV. 3017

(R.L.C.)

JUDGMENT

This action came on for trial before the Court, Honorable Robert L. Carter, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant, Todo Imports, Ltd. (Inc.), recover the plaintiff, Scarves By Vera, Inc., its costs to be taxed.

Dated at New York, New York this 13th day of August, 1975.

Robert L. Carter
U.S.D.J.

JUDGMENT ENTERED - 8/28/75

SEYMOUR O'CONNOR

A 202 Affidavit of Personal Service of Papers LUTZ APPELLATE PRINTERS, INC.

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND DEPT.**

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*Index No.*

**SCARVES BY VERA, INC.**
**Plaintiff- Appellant,**

*- against -*

**TODO IMPORTS LTD., (Inc.)**
**Defendant- Appellee.**

*Affidavit of Personal Service*

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*STATE OF NEW YORK, COUNTY OF* NEW YORK *ss.:*

*I,* James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 310 W. 146th St., New York, N. .

*That on the* 16th *day of* ~~Dec.~~ Jan. *19*~~76~~77 *at* **230 Park Avenue, New York, New York 10017**

*deponent served the annexed* Exhibit Volume *upon*

**SHENIER& O'CONNOR**

*the* **Attorneys** *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,*

*Sworn to before me, this* 16th *day of* ~~December~~ January *19*~~76~~77

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977